THE HON'BLE SRI JUSTICE A.V. SESHA SAI

WRIT PETITION No.26613 of 2015

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order of confiscation passed by the Deputy Commissioner of Prohibition and Excise, Mahabubnagar vide proceedings No.B2/309/2015, dated 14-08-2015.

Heard Sri Challa Gunaranjan, learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise for respondents, apart from perusing the material available before this Court.

According to the petitioner, it is a company incorporated under the provisions of Companies Act, 1956 and engaged in the business of manufacture, brewing, marketing and sale of beer and allied products, having its registered office at UB City, Bangalore, Karnataka State and it has one of its brewing units at Plot Nos.310, 311, 322 E, Industrial Area, Bankampadi, Mangalore, Karnataka, whereat beer is brewed in the name and style of "Kingfisher".

It is further submitted that in the course of its business the petitioner herein, upon an order placed by the Karnataka State Breweries Corporation Limited (vide invoice reference No.1511001076) for supply of 1100 boxes of Kingfisher strong premium beer cans obtained permit from the Government of Karnataka vide reference No.EXE/UBM/BRY/4384/14-15, dated 06-06-2015 with validity upto 09-06-2015 for transport of said boxes from the petitioner's unit to the depot of Karnatana State

Breweries Corporation Limited at Rajendragunj, Raichur, Karnataka.

It is further pleaded that according to the consignment of beer cans were loaded at the petitioner's unit on 06-06-2015 at around 5.00 P.M. within the premises of the petitioner's brewery and on the intervening night of 06/07-06-2015 the driver of the said vehicle suddenly fell ill and had to make a stop-over adjacent to the Udipi Highway and resumed his journey in the next morning but upon reaching Yallapur, Karnataka on 08-06-2015 driver's health further deteriorated, resulting in giddiness and high fever and he was compelled to take rest till 10-06-2015 and again he resumed the journey and reached Hubli but as there were no signs of improvement, he had to stay back at Hubli till 12-06-2015 and though he did not completely recover, the driver resumed journey and en-route Raichur and because of the intervening halts and causing in-change of routs, inadvertently he took a wrong direction leading to Mahabubnagar, Telangana State.

It is further pleaded that added to his ill-health, the weather also worsened due to incessant rains and the driver was forced to park his vehicle near a road side eatery and as the condition of the driver further worsened, he was taken to a nearby Government hospital wherein he was admitted and treated and after recovery he was discharged from hospital on 14-06-2015. The vehicle was seized by the police of Devarkadva and handed over to the Station House Officer, Prohibition and Excise, Atmakur, Mahabubnagar District, who registered a case in COR No.220/2015-16, dated 16-06-2015 against the lorry driver and owner besides seizing the consignment of beer boxes.

According to the petitioner, he approached the Deputy Commissioner of Excise, Dakshina Kannada District, Mangaluru and informed the events which took place and Deputy Commissioner addressed a letter to the 3rd respondent on 16-06-2015. Thereafter the petitioner herein made a representation, dated 25-06-2015 to the office of the Commissioner of Prohibition and Excise, Tenagana State, Hyderabad – 2nd respondent herein. Basing on the said representation the Commissioner of Prohibition and Excise called for a report from the Deputy Commissioner – 3rd respondent herein. The Deputy Commissioner submitted a report vide Cr.No.B2/309/2015, dated 06-07-2015 to the Commissioner of Prohibition and Excise and last two paragraphs of the said report read as under:

> *"It is seen from the records, the Beer stock was a intended to transport from Mangalore to Karnataka braveries corporation depot at Raichur under valid permits (from 06-06-2015 to 09-06-2015) via Udupi and Hubli after paying duty to Karnataka state. But due to ill-health and deteriorating health conditions of the driver he was stayed at Hubli up to 12-06-2015 as per medical prescription of Atmanand Clinic at Hubli dated 10-06-2015 and medical certificate issued by Dr. Ravi Malavadkar at Hubli on 12-06-2015. Due to language problem he might have lost his route and entered into Telangana State. It is also seen from the copy of T.S. Vaidya Vidhana Parishad Out-Patient Ticket dated 14-06-2015 O.P.No.20605 that he was admitted at Government Head Quarters Civil Hospital in Mahabubnagar on 13-06-2015 and relieved on 14-06-2015 due to his bad health condition leaving his lorry on road side. The police have seized the vehicle on suspicion and handed over the same to the Excise officers of Atmakur whose jurisdiction falls. Then the S.H.O., Atmakur registered the case under Section 34(a)(1)(ii) & 11 (2) of A.P. Excise Act, 1968.*
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> *In this connection it is submitted that, Beer is a perishable commodity and only (6) months life-time. In this case due to ill-health and language problem of the driver of the*

> *vehicle and vehicle could not reach destination within stipulated time i.e., up to 09-06-2015 and lost his permitted route and entered into Telangana State. In view of the above facts, the request of the applicant for compound the case may kindly be considered."*

Subsequently, the Commissioner of Prohibition and Excise – 1st respondent herein on receipt of the said report, dated 06-07-2015 requested the 3rd respondent to take further action while expressing apprehension of contravention of A.P. Excise Act. Pursuant to the said directions the Deputy Commissioner, Prohibition and Excise – 3rd respondent herein pressed into service the provisions of Section 46 of the A.P. Excise Act, 1968 for confiscation and eventually passed order of confiscation vide Cr.No.B2/309/2015, dated 14-08-2015.

Challenging the validity of the said order of confiscation passed by the Deputy Commissioner, Prohibition and Excise - 3rd respondent herein, the present writ petition has been filed.

It is contended by the learned counsel for the petitioner that the order of confiscation, dated 14-08-2015 passed by the Deputy Commissioner, Prohibition and Excise is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19 (1)(g) of Constitution of India. It is further submitted that the said action of confiscation is opposed to the very spirit and object of the provisions of A.P. Excise Act, 1968. It is further submitted that having recommended for compounding of offence in the earlier report, dated 06-07-2015 it is absolutely not open for the Deputy Commissioner, Prohibition and Excise to order confiscation of the property under the provisions of Section 46 of A.P. Excise Act. It is further submitted that the 3rd respondent herein did not take into consideration the material available on record properly.

Per contra, it is contended by the learned Government Pleader, appearing for respondents that there is absolutely no illegality nor there is any procedural infirmity in the impugned action, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief in this writ petition filed under Article 226 of the Constitution of India. It is the further submission of learned Government Pleader that the petitioner herein has the alternative remedy under the provisions of A.P. Excise Act, as such, the present writ petition is not maintainable before this Court.

The material available before this Court candidly discloses that on a representation made by the petitioner herein, a report was called for by the Commissioner of Prohibition and Excise and in response to the same, the Deputy Commissioner, Prohibition and Excise – 3rd respondent herein submitted a report also and the operative portion of the said report is already extracted in the preceding paragraphs.

The said report clearly shows that the Deputy Commissioner, Prohibition and Excise, after considering the factual and ground situation, recommended for consideration of the request of applicant for compounding of the case. But subsequently pursuant to the orders of the Commissioner of Prohibition and Excise, dated 22-07-2015, wherein the Commissioner expressed apprehension with regard to contravention of the provisions of A.P. Excise Act, the Deputy Commissioner, Prohibition and Excise passed the impugned order of confiscation, dated 14-08-2015.

At this juncture, it is the submission of the learned counsel for the petitioner that the 3rd respondent herein was taken away by the opinion of the Commissioner of Prohibition and Excise and did not apply the mind independently to the ground realities and the facts of the case.

Repelling the contentions of learned Government Pleader with regard to maintainability of the present writ petition, in view of the alternative remedies available under the statute, it is contended by the learned counsel for the petitioner that the said alternative remedy of appeal to the Commissioner pales into insignificance because of the opinion already expressed by the Commissioner vide orders, dated 22-07-2015.

At this juncture, it is submitted by the learned Government Pleader that under the provisions of
Section 64 of A.P. Excise Act, it is always open for the petitioner herein to file a revision before the State Government against the orders passed by the Deputy Commissioner, Prohibition and Excise.

In view of the factual situation and the legal position available on hand, this Court is of the considered opinion that the ends of justice would be met if the petitioner herein is permitted to avail the said remedy of revision before the State Government under the provisions of Section 64 of A.P. Excise Act, 1968.

Taking into consideration the nature of controversy and the nature of goods seized and taking into consideration the request of the learned counsel for the petitioner that the confiscated goods may be directed to be released subject to furnishing Bank guarantee, this Court is of the considered opinion that the petitioner herein can be permitted to avail the remedy of revision before the Government, while directing that the confiscated goods seized can be released subject to furnishing Bank guarantee.

For the aforesaid reasons, the writ petition is disposed of, giving liberty to the petitioner herein to avail alternative remedy of revision before the State Government under Section 64 of A.P. Excise Act against the impugned order, dated
14-08-2015 within a period of two (2) weeks from the date of receipt of a copy of this order. If any such revision is filed within the time stipulated above, the same be considered and appropriate orders be passed by the State Government – 1st respondent herein within a period of six (6) weeks from the date of filing of the revision.

The stocks seized by the respondent authorities shall be released in favour of the petitioner herein subject to the petitioner furnishing Bank guarantee for the same as assessed by the Excise Superintendent. The said assessment shall be made within a period of one week from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. There shall be no order as to costs.

A.V. SESHA SAI, J

August 21, 2015

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THE HON'BLE SRI JUSTICE A.V. SESHA SAI

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