

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

**WRIT PETITION No.27129 OF 2015**

**ORDER:**

This writ petition filed under Article 226 of the Constitution of India challenges the order passed by respondent No.2 herein – The Commissioner, Prohibition and Excise, Telangana State, Hyderabad vide order in Cr.No.863/2015/CPE/TS/F4, dated 18.04.2015.

2. By virtue of the said order, respondent No.2 rejected the appeal filed by the petitioner herein on the ground of delay of two (2) days in filing the same.

3. Followed by a show cause notice vide Cr.No.1393/2014/P&Ex/A3, dated 22.11.2014, of respondent No.3 - The Deputy Commissioner of Prohibition and Excise, Karimnagar District and explanation offered by the petitioner on 15.12.2014, respondent No.3 passed an order of confiscation vide proceedings in Cr.No.1393/2014/P&Ex./A3, dated 27.12.2014. Questioning the validity of the order of confiscation passed by respondent No.3, the petitioner herein preferred a statutory appeal under the provisions of Section 46-C of the A.P. Excise Act, 1968 (for short, "the Act") on 26.02.2015. Respondent No.2, by way of an order vide Cr.No.863/2015/CPE/TS/F4, dated 18.4.2015, rejected the appeal filed by the petitioner on the ground that there was a delay of two days in filing the said appeal.

4. Calling in question the validity and illegal sustainability of the order passed by respondent No.2, the present writ petition has been filed.

5. It is contended by the learned counsel appearing for the petitioner herein that the impugned order of rejection passed by

respondent No.2 rejecting the appeal filed by the petitioner herein is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India. It is further submitted by the learned counsel for the petitioner that since respondent No.3 passed the order of confiscation on 27.12.2014 and the appeal was filed on 26.2.2015, respondent No.2 grossly erred in rejecting the appeal on the ground of delay. It is further submitted that as per the provisions of Section 46-C of the Act, statutory appeal needs to be filed within 60 days from the date of the order and in the instant case, the petitioner herein filed the appeal within the time stipulated by the statute.

6. On the contrary, it is submitted by the learned Government Pleader for Prohibition and Excise (Telangana) that there is no illegality nor procedural irregularity in passing the impugned order and as such, the petitioner herein is not entitled to any relief and the present writ petition is liable to be dismissed.

7. The material available before this Court manifestly discloses that as against the order of confiscation, dated 27.12.2014, passed by respondent No.3 herein, the petitioner herein preferred a statutory appeal under Section 46-C of the Act on 26.2.2015. As per the provisions of Section 46-C of the Act, the time stipulated for filing an appeal is 60 days and in the instant case, as evident from the material available on record, the appeal was filed within the time stipulated. It is also the case of the petitioner herein that the order of confiscation was not communicated to him and the petitioner received the same from Noukarnama. It is also the case of the petitioner that as there was no delay in filing the appeal, he did not file any application for condonation of the delay. A perusal of the impugned order discloses that respondent No.2 did not assign any valid reason for rejecting the appeal filed by the petitioner herein on the ground of delay.

8. In these circumstances, this Court deems it appropriate to set

aside the order passed by respondent No.2 herein and to remand the matter to respondent No.2 for fresh consideration in accordance with law.

9. For the aforesaid reasons, the Writ Petition is allowed setting aside the order of respondent No.2 herein dated 18.4.2015 and the matter is remanded to respondent No.2 herein for fresh consideration of the appeal filed by the petitioner herein on merits in accordance with law. There shall be no order as to costs.

10. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

**JUSTICE A.V.SESHA SAI**

Date: 01.09.2015  
AMD

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

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**DATE: 01.09.2015**

AMD