**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**WRIT PETITION No.9123 of 2008**

**ORDER**:

The petitioner is engaged in the business of manufacture of Indian made liquor under licence and permit obtained in accordance with law. The principal raw material for manufacture of Indian made liquor is Rectified Spirit (for short, 'the R.S.'), which is converted into Extra Neutral Alcohol and then used for the manufacture of potable alcohol. The movement of R.S./Extra Neutral Alcohol is regulated by the officers of the Department of Prohibition and Excise. The petitioner has been procuring the R.S. from the neighbouring State of Karnataka, for which purpose it obtained a permit to import 20,000 bulk litres of R.S. from one M/s. Sri Haranyakeshi SSK Niyamit, Shankeshwar, Belgaum, Karnataka. A permit was issued on 15.02.2008 imposing certain conditions including the condition of indemnifying to the Government in the event of loss of goods during transit by way of theft, leakage, breakages, fire accidents and evaporation etc. While the goods were being transported from Karnakata on 22.02.2008, the tanker bearing registration No.AP16 TW 869 turned turtle between Lingeshwar and Raichur in Chikkahbsarur in a private field. The lorry caught fire, as a result, the contents also were burnt and the driver died on the spot. When the respondent issued a notice demanding the duty based on condition No.6 of the permit, the present writ petition was filed mainly on the ground that no excise duty can be levied on the R.S. as laid down by the Hon'ble Supreme Court in the decisions of **Synthetics and Chemicals Limited v. State of Uttar Pradesh**[1] and **State of**

**U.P. v. Modi Distillery[2].**

A counter affidavit is filed by the respondents stating that the Commissioner of Prohibition & Excise has issued a permit for import of 5,00,000 bulk litres of R.S. from M/s. Shri Haranyakeshi SSK Niyamit Shankeshwar, Belgaum, Karnataka vide Cr. No.3481/2007/CPE/B2 dated 18.01.2008. In pursuance of the said permission, three transport permits were issued by the Commissioner of Prohibition & Excise for transport of 60,000 bulk litres of R.S. covered by three consignments of 20,000 bulk litres each. The petitioner received two consignments while the third one could not be received as the tanker turned turtle and the lorry and contents were burnt in fire. As per condition No.6 of the import permit, the importer is bound to pay excise duty @ Rs.15.40 ps per litre and accordingly, an amount of Rs.5,14,052/- was demanded. It was stated in the counter that the petitioner did not question the G.O.Ms.No.550 (Revenue) Excise, dated 17.05.1977 and hence, he is not entitled to any relief. It was further stated that the said excise duty should be treated as penalty, which was agreed by the petitioner at the time of securing import permit by way of indemnity bond and in view of the agreed condition, he is bound to comply with the same. It was clarified in the counter that the respondent was not imposing any excise duty on the R.S., which is not meant for human consumption.

There is no dispute that the petitioner obtained a permit on 15.02.2008 and condition No.6 of the permit reads as follows:

> **6**. The Licensee has agreed to indemnify the Government by the payment of full Excise duty @ per LPL of transit during transit by way of theft, leakage, breakages, fire accidents and evaporation etc., over and above limits of 0.5% towards the transit as notified in G.O.Ms.No.550 Rev (Ex)

> Dept, dated 17.05.1977 and as per condition No.3 of the above. The Unit has paid import pass fee of Rs.60,000/- (Rs. Sixty Thousand only) vide Challan No.101164, dated 18.04.2008 at SBH, Gruhakalpa Branch, Hyderabad as per G.O.Ms.No.630, Rev (Ex-II) Dept, dated 24.05.2003."

Now, learned counsel for the petitioner submits that in view of the authoritative pronouncement of the Supreme Court of India in the above cited cases, R.S. is not liable for excise duty and hence, the respondent cannot demand any amount for the loss on the basis of excise duty.

It has to be seen whether the permit was issued in accordance with the A.P. Rectified Spirit Rules, 1971.

Sub-rule (7) of Rule 14 of the A.P. Rectified Spirit Rules, 1971, provides for recovery of cost of conveying the consignment of R.S. to the place of import and all risks incidental to such conveyance from the importer. In accordance with the said sub-rule only, the above condition was imposed. If there was no loss during transit, the importer is not under obligation to pay any amount. Though the amount imposed for the loss was termed as excise duty, it is not an excise duty in view of the nature of recovery and indemnification sought by the Government. If it is in the nature of excise duty, the importer is liable to pay the same irrespective of the loss, in the absence of the decisions of the Supreme Court as stated above, but that is not the case here. The importer need not pay any excise duty if there is no loss. Hence, it cannot be called as excise duty, but only a penalty imposed on the importer for obtaining permit, for which the importer had also agreed. The importer never challenged the said condition immediately after the import, but came to this Court only when a demand is made after the loss had occurred.

In the circumstances, there is no justification and in fact, the petitioner is estopped from raising the plea when a demand is made by the respondents.

With the above observations, this Writ Petition is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

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**A.RAMALINGESWARA RAO**, **J**

17.03.2016
MVA

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[1] 1990 (1) SCC 109
[2] 1995 (5) SCC 753