

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT PETITION No.6657 of 2002

Date: 08.06.2016

Between:

Jagatjit Industries Limited, having its Office at 505,
Lingapur Complex, Himayathnagar, Hyderabad,
Rep.by its Deputy Manager, Accounts,
Sri R.K.Murthy, S/o K.R.K. Murthy

..... Petitioner

and

Commissioner, Prohibition and Excise,
Nampally, Hyderabad and others.

.....Respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

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PC: (*Per the Hon'ble Sri Justice P.NavePen Rao*)

Jagatjit Industries were involved in manufacturing of Indian Made Liquor. The company was issued two import permits dated 20.09.1997 for transportation of 550 cartons of Binnies Fine Whisky in each of the permits to Andhra Pradesh Brewarage Corporation Limited at Chittoor. In terms of these two permits, 550 cartons of IML Liquor were transported in Truck bearing No.DL 1G 1787 and another 550

cartons in another Truck bearing No.HR 29D 4724. The permit was for a limited period from 23.09.1997 to 04.10.1997. After the two trucks left the premises of Distillery at Hamira in State of Punjab, on the way, Truck bearing No.DL 1G 1787 broke down. Since both trucks were proceeding to State of Andhra Pradesh and other truck had 20 tons capacity, the goods from the broken down truck were loaded into the bigger truck and consignment was transported to the State of Andhra Pradesh. While so, on 18.10.1997, the said truck was seized along with consignment of 1100 cartons of IML whisky on the ground that excise authorities were not informed of break down and loading of entire stock in another truck. By the order of the Deputy Commissioner of Prohibition and Excise, Karimnagar Division, the vehicle and goods were confiscated. In the appeal, the said order was upheld by the Commissioner of Prohibition vide his orders dated 03.05.2001. Challenging the orders of the Deputy Commissioner as confirmed by the Commissioner, the instant writ petition was instituted.

2. It appears that the vehicle was released to the owner on furnishing bank guarantee for Rs.60,000/- and the consignment was released in favour of the petitioner with two conditions;

1) payment would not be given to him until finalization of confiscation proceedings and 2) 1100 cartons would be transmitted into another two vehicles and transported to Chittoor along with an Escort.

3. Heard learned counsel for petitioner and learned Government Pleader for respondents.

4. The only allegation appears to be that when the other vehicle had 20 tons capacity and total quantity is only 20 tons, there was no good reason to split the consignment and to transport the quantity in two separate trucks and when the break down of one vehicle was closer to the distillery, they could have as well ensured loading of the goods in another vehicle with proper intimation. The *bona fides* of the petitioner was also doubted on the ground that when 20 tons truck was

engaged, only 10 tons were loaded and another truck was engaged to load balance quantity. It was further alleged that writ petitioner ought to have informed the Excise authorities about the break down of the vehicle and loading of consignment in vehicle.

5. It is specifically contended by the learned counsel for petitioner that criminal proceedings initiated against petitioner under A.P.Excise Act were closed on the ground that petitioner had valid permit for transportation and that he has not committed any illegality. The specific stand of the petitioner that there was break down of the vehicle and due to time constraint as the petitioner was to deliver the consignment before 04.10.1997, he had no option, but to immediately shift the stock to another vehicle, proceeding to the same destination, he could not inform the same to the excise authorities, is not denied. No counter affidavit is filed opposing the stand of the petitioner.

6. Record would disclose that petitioner had valid permit to import 1100 cartons of IML to State of Andhra Pradesh to be delivered at Chittoor. The liquor transported is duty paid. There is no allegation of disparity in the quantity or quality of liquor found in consignment and there is no allegation of tampering with the seals. Thus, the objection of excise authorities is hyper technical and alleged illegality of not informing the excise authorities is negligible to take such a drastic action. Thus, the order of confiscation and confirmation of the same by the Commissioner is set aside and respondents are directed to release the amount to the 1100 cartons of Binnies Fine Whisky delivered to the 3rd respondent corporation, as agreed at the time of granting permits.

9. Accordingly, writ petition is disposed of. Miscellaneous petitions if any pending stand disposed of. No costs.

DILIP B. BHOSALE, ACJ

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