THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.23026 of 2012

ORDER:

The petitioner is a licensee for the sale of Indian liquor and Foreign Liquor in respect of Shop No.79. The lease period was from 01.07.2010 to 30.06.2012. He was issued a licence for selling the liquor in respect of the premises bearing D.No.3-163 at Koduru-A Village, Koduru Mandal, Krishna District in the name and style of M/s. Appikatla Veeraiah Brothers Wines. The total licence fee was Rs.2,05,55,555/-. The last instalment for an amount of Rs.34,22,000/- was paid in the month of February 2012. While so, respondent No.3 suspended the licence for a period of 15 days pending enquiry by proceedings dated 03.04.2012. Ultimately he was imposed a penalty of Rs.50,000/- and the said amount of penalty was paid. Respondent No.3 has passed another order on 12.04.2012 in connection with another incident and the operation of the licence of petitioner was suspended for another period of 15 days. In the second case, he was imposed a penalty of Rs.1,00,000/-. He paid the penalty amount on 11.04.2012. The shop of petitioner was seized on 30.03.2012. In view of the above incidents, he was not allowed to run the business upto 30.06.2012. Seeking refund of the amount of licence fee for the period of non-business from 30.03.2012 to 30.06.2012, the present writ petition was filed.

A counter affidavit was filed stating that the raid on the petitioner's shop was conducted and the following loose liquor bottles were found in the shop.

(i) Bag Piper Fine Regular Whiskey 750 ML capacity bottle with about 300 ML Loose Liquor.
(ii) O.T.R are Whiskey 750 ML Bottle with about 640 ML Loose liquor.
(iii) American Delux Whiskey 1000 ML capacity Bottle with about (90) ML loose liquor.

(iv) Gold Ribboned whiskey 180 ML capacity Bottle with about 90ML loose liquor.

As per Condition No.6 of Form A4 Licence, the licensee shall sell only duty paid IMFL in sealed, capsuled bottles affixed with Excise adhesive labels and manufacturer labels. Since he violated the licence conditions, bottles were seized and the Nowkarnama holder was arrested in Cr.No.121/2011-12 under Section 36(1)(b) and (c) of the A.P. Excise Act, 1968. The licence of petitioner was suspended in public interest pending enquiry. He submitted a representation seeking compounding of the offence. Another case was registered on 10.04.2012 against A4 shop of the petitioner in Cr.No.2/2012-13 for violation of licence conditions and certain stock was seized. The shop was sealed on 12.04.2012 keeping the entire stock available in the shop in the licensed premises. He submitted another representation by paying an amount of Rs.1,00,000/- for compounding the offence. Though the cases of petitioner for compounding the offences were recommended and the orders were awaited, the lease of petitioner came to an end on 30.06.2012. The respondents have also relied on a decision of this Court in **S.L.V. Wines, Cuddapah v. State of A.P.**[1] wherein it was held that the licensee is not entitled for any remission of the licence fee consequent to cancellation or suspension of the licence.

In the light of the above facts and circumstances and in view of the decision of this Court in **S.L.V. Wines** (supra), the request of petitioner for refund of Rs.34,22,000/- cannot be granted as the same is prohibited under Section 31(3) of the A.P. Excise Act. However, with regard to seizure of the stock, the same would be subject to the proceedings issued by the Commissioner of Prohibition & Excise with regard to compounding of offences.

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

A.RAMALINGESWARA RAO, **J**

18.02.2016
MVA

[1] (2009) 5 ALD 170