

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.5372 of 2007

{Arising out of order dated 7-2-2007 in Appeal No.A/05/E/96/2006 of the learned Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court, Raipur)}

State of Chhattisgarh, Through the Secretary, Department of Excise, D.K.S. Bhawan, Mantralaya, Raipur (CG)

---- Petitioner

Versus

1. M/s Kedia Castle Delleon Ind. Ltd., Kedianagar, P.O. Kumhari, District Durg (CG)
2. The Board of Revenue Chhattisgarh, Bilaspur, Circuit Court, Raipur (CG)

---- Respondents

Writ Petition (C) No.5375 of 2007

{Arising out of order dated 7-2-2007 in Appeal No.A/05/E/95/2006 of the learned Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court, Raipur)}

State of Chhattisgarh, Through the Secretary, Department of Excise, D.K.S. Bhawan, Mantralaya, Raipur (CG)

---- Petitioner

Versus

1. M/s Kedia Castle Delleon Ind. Ltd., Kedianagar, P.O. Kumhari, District Durg (CG)
2. The Board of Revenue Chhattisgarh, Bilaspur, Circuit Court, Raipur (CG)

---- Respondents

Writ Petition (C) No.5376 of 2007

{Arising out of order dated 7-2-2007 in Appeal No.A/05/E/93/2006 of the learned Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court, Raipur)}

State of Chhattisgarh, Through the Secretary, Department of Excise, D.K.S. Bhawan, Mantralaya, Raipur (CG)

---- Petitioner

Versus

1. M/s Kedia Castle Delleon Ind. Ltd., Kedianagar, P.O. Kumhari, District Durg (CG)
2. The Board of Revenue Chhattisgarh, Bilaspur, Circuit Court, Raipur (CG)

---- Respondents

Writ Petition (C) No.5374 of 2007

{Arising out of order dated 7-2-2007 in Appeal No.A/05/E/92/2006 of the learned Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court, Raipur)}

State of Chhattisgarh, Through the Secretary, Department of Excise, D.K.S. Bhawan, Mantralaya, Raipur (CG)

---- Petitioner

Versus

1. M/s Kedia Castle Delleon Ind. Ltd., Kedianagar, P.O. Kumhari, District Durg (CG)
2. The Board of Revenue Chhattisgarh, Bilaspur, Circuit Court, Raipur (CG)

---- Respondents

Writ Petition (C) No.5373 of 2007

{Arising out of order dated 7-2-2007 in Appeal No.A/05/E/94/2006 of the learned Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court, Raipur)}

State of Chhattisgarh, Through the Secretary, Department of Excise, D.K.S. Bhawan, Mantralaya, Raipur (CG)

---- Petitioner

Versus

1. M/s Kedia Castle Delleon Ind. Ltd., Kedianagar, P.O. Kumhari, District Durg (CG)
2. The Board of Revenue Chhattisgarh, Bilaspur, Circuit Court, Raipur (CG)

---- Respondents

Writ Petition (C) No.5377 of 2007

{Arising out of order dated 7-2-2007 in Appeal No.A/05/E/317/2006 of the learned Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court, Raipur)}

State of Chhattisgarh, Through the Secretary, Department of

Excise, D.K.S. Bhawan, Mantralaya, Raipur (CG)

---- Petitioner

Versus

1. M/s Kedia Castle Delleon Ind. Ltd., Kedianagar, P.O. Kumhari, District Durg (CG)
2. The Board of Revenue Chhattisgarh, Bilaspur, Circuit Court, Raipur (CG)

---- Respondents

For Petitioner/State: Mr. Prasun Kumar Bhaduri, Govt. Advocate.
For Respondent No.1: Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/11/2017

1. In this batch of writ petitions, common question of law and fact is involved, therefore, they are tagged together and heard together and are being disposed of by this common order.
2. Respondent No.1 is a distillery having license under the Chhattisgarh Distillery Rules, 1995 (for short, 'the Rules of 1995') in Form D-1. Less recovery of alcohol during different periods than which has been prescribed under Rule 5(1) and (2) of the Rules of 1995 has been noticed for which show cause notice was issued to respondent No.1 by the Excise Commissioner seeking explanation as to why penalty should not be recovered at the rate of ₹ 30/- per proof litre for the less recovered alcohol. The said authority finding that the explanation is not acceptable and is not in terms of Rule 8(2) of the Rules of 1995, decided to impose penalty upon respondent No.1 as mentioned in the impugned orders in each of

the cases separately. Feeling aggrieved and dissatisfied with the order of penalty passed by the Excise Commissioner, respondent No.1 herein preferred appeals before the Board of Revenue and the Board of Revenue by the impugned orders, allowed the appeals and set-aside the order imposing penalty by the learned Excise Commissioner, and questioning those orders, these writ petitions have been preferred by the State Government stating inter alia that the orders passed by the Board of Revenue setting aside the order of the Excise Commissioner are perverse and contrary to record.

3. Mr. Prasun Kumar Bhaduri, learned Government Advocate appearing for the State/petitioners, would submit that the order passed by the Excise Commissioner was strictly in accordance with law and the Board of Revenue has committed jurisdictional error in reversing the order passed by the Excise Commissioner, as respondent No.1 distillery has failed to prove by scientific material disputing the show cause notice and further failed to establish that the failure was not deliberate and due precaution was taken by it to maintain the prescribed efficiency. Therefore, the orders passed by the Board of Revenue be set aside and those of the Excise Commissioner be restored.
4. Mr. Abhishek Sinha, learned counsel appearing for respondent No.1, would submit that the authority conferred on the Excise Commissioner to impose penalty for breach of Rule 5 of the Rules of 1995 is discretionary and there is no statutory compulsion which

mandates imposition of penalty even when it is found that failure to maintain prescribed efficiency and recovery was not the deliberate act attributable to the distiller/respondent No.1. Inviting the attention of this Court to para 10 of the finding of the Commissioner, he would submit that *mens rea* is necessary for imposing the order of penalty as it is an essential condition for levy of penalty. Therefore, the orders of the Board of Revenue deserve to be maintained and the writ petitions deserve to be dismissed.

5. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the record with utmost circumspection.
6. It is not in dispute that less recovery of alcohol during different periods as prescribed under Rules 5 (1) and (2) of the Rules of 1995 was noticed by the competent authority for which respondent No.1 was served with show cause notice and ultimately, penalty has been imposed as provided under Rule 8(2) of the Rules of 1995. Sub-rule (2) of Rule 8 of the Rules of 1995 states as under: -

“(8) **Penalties.**(2)—The Excise Commissioner may impose penalty at a rate not exceeding Rs. 30/- per proof litre in case there is short recovery of Alcohol as per rule 5 unless it is provided by the Licensee that failure was not deliberate and due precaution was taken by him to maintain the prescribed efficiency and recovery.”

7. A focused glance of the aforesaid provision would show that the Excise Commissioner is empowered to levy a penalty at a rate not

exceeding ₹ 30/- per proof litre in case there is short recovery of alcohol as per Rule 5 of the Rules of 1995, unless it is proved by the licensee that failure was not deliberate and due precaution was taken by him to maintain the prescribed efficiency and recovery.

8. The Supreme Court in the matter of **Bharjatiya Steel Industries v. Commissioner, Sales Tax, Uttar Pradesh**¹ held as under: -

“19. A distinction must also be borne in mind between a statute where no discretion is conferred upon the adjudicatory authority and where such a discretion is conferred. Whereas in the former case the principle of mens rea will be held to be imperative, in the latter, having regard to the purport and object thereof, it may not be held to be so.

22. It is, therefore, difficult to accede to the contention of Mr Banerjee that under no circumstances absence of mens rea would not be a plea for levy of penalty. An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary implication, the authority may not levy penalty. If it has the discretion not to levy penalty, existence of mens rea becomes a relevant factor. ...”

9. Similar is the proposition laid down recently by the Supreme Court in the matter of **Excel Crop Care Limited v. Competition Commission of India and another**² and relying upon the decision in the matter of **Hindustan Steel Ltd. v. State of Orissa**³, Their Lordships of the Supreme Court have held that imposition of penalty is a matter of discretion of the authority to be exercised

1 (2008) 11 SCC 617

2 (2017) 8 SCC 47

3 (1969) 2 SCC 627

judicially and on a consideration of all the relevant circumstances,
and observed as under: -

“110. Moreover, in *Hindustan Steel Ltd. v. State of Orissa* (supra), this Court made the following observations: (SCC p. 630, para 8)

“8. ... An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. *Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances.* Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.”

(emphasis supplied)

10. Likewise, G.P. Singh, C.J., speaking for a Division Bench of the Madhya Pradesh High Court in the matter of **Sharma & Company, Bilaspur v. State of Madhya Pradesh, and others**⁴ while dealing with imposition of penalty leviable under Section 62(2)(h) of the M.P. Excise Act, 1915 has held that whenever a statute or statutory rule provides for imposition of penalty, it is not obligatory on the authority concerned to impose penalty in every case even though a minimum penalty is prescribed relying upon **Hindustan Steel Ltd.**

4 1981 M.P.L.J. 422

(supra).

11. Dealing with similar situation and identical issue, Their Lordships of the Supreme Court in the matter of **Karnataka Rare Earth and another v. Senior Geologist, Department of Mines & Geology and another**⁵ held as under: -

“18. ... The Court held that the liability to pay penalty did not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out the statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged has either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct or acted in conscious disregard of its obligation. Penalty will also not be imposed merely because it is lawful to do so. In spite of a minimum penalty prescribed, the authority competent to impose the penalty may refuse to impose penalty if the breach complained of was a technical or venial breach or flew from a bona fide though mistaken belief. ...”

12. Following the principles of law laid down in the afore-cited cases, if the facts of the present case and the provision contained in Rule 8(2) of the Rules of 1995 are examined, it is quite vivid that the Excise Commissioner in para 10 of his order has clearly held that it is not the case that the respondent distiller has not followed the rules and obtained less quantity of liquor deliberately. It has also been held that it is also not the case that the respondent distiller has misused the alcohol and also further held that there is no loss

5 (2004) 2 SCC 783

of revenue to the State Government, but further recorded a finding that Rule 5(2) of the Rules of 1995 has been violated and therefore less quantity of alcohol has been obtained and thus, proceeded to impose penalty which has been interfered with by the Board of Revenue in exercise of appellate jurisdiction in appeal preferred by respondent No.1 herein. The Board of Revenue has clearly recorded a finding relying upon para 10 of the order of the Excise Commissioner which has been noticed herein-above and once a finding has been recorded that there is no deliberate failure on the part of the distiller and there is no loss to the State Government and since the order of the Excise Commissioner is a discretionary order in which there is no finding of mens rea, therefore, following the decision of the Supreme Court in **Karnataka Rare Earth** (supra), imposition of penalty was clearly contrary to law which has been corrected by the Board of Revenue in its appellate jurisdiction.

13. In view of the aforesaid analysis, I do not find any illegality or error in the orders passed by the Board of Revenue. The writ petitions deserve to be dismissed and are accordingly dismissed affirming the order passed by the Board of Revenue leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge