

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4216 OF 2017

M/S GANGAKHED SUGAR AND ENERGY LTD THROUGH ITS
DISTILLERY MANAGER B M LOHAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. D.B.Sawant, with Mr.Santosh
Patil, i/b Mr. M.V.Nagargoje.
AGP for Respondent State: Mr.S.P.Tiwari

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CORAM : P.R. BORA, J.
Dated: April 05, 2017

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PER COURT :-

1. The petitioner has filed the present petition taking exception to order dated 21st of October, 2016, passed by respondent no.3 and the order dated 10th of January, 2017, passed by respondent no.2.
2. A complaint has been filed against the petitioner for the offenses punishable under Sections 65 (A) and (E), 81, 83, 90 and 108 of the Maharashtra Prohibition Act vide Crime No.333/2016, in the Court of Judicial Magistrate, First Class, Pathardi.
3. In the aforesaid offense a tanker containing 20,000 liters of spirit was seized. It was alleged that the spirit

contained in the said tanker was being unauthorizedly transported, to be used for manufacture of potable liquor. The Tanker was seized near village Pathardi.

4. In view of the offense so registered against the petitioner factory, show cause notice was issued to the petitioner factory as to why their license shall not be cancelled. The show cause notice was duly replied by the petitioner. It was denied by the sugar factory that the spirit was being transported for manufacture of potable liquor. The explanation submitted by the sugar factory was not accepted by the Commissioner, State Excise, Maharashtra State, Mumbai, and the Commissioner, vide order passed on 21st of October, 2016, cancelled the license of the petitioner factory. The order so passed by the Commissioner has been challenged by the petitioner before the Minister of State Excise by filing an appeal. In the said appeal, the Honourable Minister has passed an interim order on 10th of January, 2017, directing the petitioner factory to deposit the excise duty on the seized 20,000 liters of spirit in two installments. The first installment was to be immediately deposited and the second installment was directed to be deposited on or

before 10th of April, 2017 and subject to the aforesaid condition, stay was granted to the order of cancellation of the license.

5. Learned Counsel appearing for the petitioner submitted that, in fact, no duty is liable to be charged by the State Government on the spirit contained in the seized tanker. Learned Counsel invited my attention to the amendment caused to Entry No.26 in the First Schedule of the Industries (Development & Regulation) (Amendment) Act, 1951, whereby the original entry appearing as 'fermentation industries' is substituted by 'fermentation industries (other than potable alcohol)'. Learned Counsel thereafter invited my attention to Entry No.51 in the List II of the State List appended to Schedule VII of the Constitution of India, pointing out that the State can charge and recover the excise duty only on the alcoholic liquors for human consumption. Learned Counsel submits that no excise duty is payable for industrial alcohol.

6. Learned Counsel submitted that considering the provisions as above, in fact, no such direction could have been issued by the Honourable Minister for depositing the

excise duty on the material so seized. However, just to keep the license intact, and keep the factory running, the first installment has been deposited by the petitioner factory. Learned Counsel submitted that the petitioner is ready to argue the appeal finally before the Honourable Minister, however, if the order passed by the Honourable Minister for payment of second installment is not stayed, the license of the petitioner factory is likely to be cancelled after 10th of April, 2017.

7. Learned A.G.P. has supported the order passed by the Honourable Minister. He pointed out that the order passed by the Honourable Minister indicates that some proposal has also been submitted by the petitioner for compounding of the matter. Learned A.G.P. submitted that in such circumstances, no interference may be caused in the matter.
8. After having considered the submissions and after having gone through the relevant provisions brought to my notice by the learned Counsel, it appears to me that the present petition can be disposed of by passing following order:

ORDER

1. The Honourable Minister shall hear and decide the appeal filed by the petitioner before him as expeditiously as possible and preferably within a period of eight weeks from the date of this order.
2. If any proposal of compounding is pending before the Honourable Minister, it would be open for the Honourable Minister to consider the said proposal in accordance with law.
3. It is further directed that the license of the petitioner shall not be cancelled till decision of the appeal by the Honourable Minister and in case of dismissal of appeal next two weeks thereafter.
4. The issues which are raised by the petitioner as well as by the State in this petition are kept open to be agitated in the appeal before the Honourable Minister.

With the directions as above, the writ petition stands disposed of.

(P.R. BORA, J.)

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