IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.751 OF 2017

Mr. Agnelo Lobo,
aged 68 years, Indian National,
R/o. H.No.67/5, Socorro, Vaddem,
Porvorim, Bardez, Goa. .. Petitioner

V/s

1. The Commissioner of Excise,
Government of Goa,
having office at Panaji-Goa.

2. The Chief Secretary,
Government of Goa, Secretariat,
Porvorim Bardez, Goa

3. Mrs. Rosy Milena D'Souza,
major in age, Indian,
National, R/o. House No.81,
Vaddem, Socorro,
Bardez- Goa,

4. Mr. Luis Salvador Lobo,
major in age, Indian
National, R/o. House No.1,
Vaddem, Socorro,
Bardez, Goa .. Respondents

Mr. N. Noronha, holding for Mr. Y. V. Nadkarni, Advocate for the petitioner.

Ms. P. Kamat, Additional Government Advocate for the respondent nos.1 and 2.

Mr. G. Usgaonkar, Advocate for the respondent nos.3 and 4.

CORAM :- **C. V. BHADANG, J.**

Date :- 25th September, 2017

ORAL JUDGMENT :

By this petition, the petitioner is challenging the order dated 09/08/2017, passed by the second respondent in an appeal under Section 40 of the Goa Excise Duty Act, 1964 (the Act, for short).

2. The brief facts are that the on the basis of a complaint lodged by the respondent nos.3 and 4, the Commissioner of Excise had issued a show cause notice on 02/09/2013 to the petitioner, directing him to show cause as to why the excise licence bearing No.FCL/138, should not be cancelled. The petitioner appeared before the Excise Commissioner and prayed that the proceedings be kept in abeyance as the substantive dispute between the parties is *sub-judice* before the Civil Court in Special Civil Suit No.2/2015 before the learned Senior Civil Judge at Mapusa. The learned Commissioner of Excise refused to keep the proceedings in abeyance by his order dated 12/04/2016. Feeling aggrieved, the petitioner approached the second respondent, who is the Appellate Authority with an appeal under Section 40 of the Act. The second respondent, by an order dated 09/08/2017, found that *prima facie*, the licence has been transferred in the name of Mr. Victorino J. Lobo by submitting the statements and documents, which are disputed and the matter is pending in the Competent Court. The second respondent found that when the very basis of the extant licence "is potentially suggestive of misdirection before a public authority", it will be improper to allow the licence to be alive. Thus, while setting aside the order dated 12/04/2016, passed by

the Excise Commissioner and thus, agreeing to keep the proceedings in abeyance, has suspended the licence under Section 16 of the Act. Feeling aggrieved, the petitioner is before this Court.

3. I have heard the learned Counsel for the petitioner as also the respondent nos.3 and 4. I have also heard the learned Additional Government Advocate for the respondent nos.1 and 2.

4. It is submitted by the learned Counsel for the petitioner that the only issue in appeal before the second respondent was whether the proceedings before the Commissioner of Excise should be kept in abeyance or not. It is submitted that thus, the second respondent could not have directed the licence to be suspended under Section 16 of the Act, without there being any notice of the same to the petitioner in the appeal. It is submitted that in fact, the main question about cancellation of licence is still pending before the Commissioner of Excise.

5. The learned Counsel for the respondent nos.3 and 4 has supported the impugned order. It is contended that under Section 40(c) of the Act, the Appellate Authority can pass any other order as it may think fit. It is contended that the Appellate Authority acting under Section 40(c) of the Act, had an authority to direct the licence to be kept in suspension.

6. The learned Additional Government Advocate has fairly submitted that this Court may pass appropriate order in the light of the submissions made by the contesting parties.

7. I have carefully considered the rival circumstances and the submissions made and I find that the part of the order directing suspension of licence cannot be sustained. As noticed earlier, on the basis of the complaint by the respondent nos.3 and 4, the Commissioner of Excise has initiated action under Section 16 of the Act and issued a show cause notice to the petitioner. In reply to the show cause notice, it was, *inter alia,* contended by the petitioner that the said proceedings be kept in abeyance as the substantive dispute between the parties is *sub-judice* before the competent Civil Court. It would be significant to note that issue no.3 in the said civil suit covers the said dispute, which reads as under :

> *"3. Whether the plaintiffs prove that Victorino Joseph Lobo the brother-in-law of Luisa Inacinha Lobo filed false affidavit before the Excise authority and by misrepresentation got the Excise Licences of suit bar transferred in his name?"*

8. It can, thus, be seen that the only issue involved was whether the proceedings before the Commissioner of Excise can be kept in abeyance or not. The only issue involved in the appeal before the second respondent, was whether the order

passed by the Commissioner of Excise refusing to keep the proceedings in abeyance, was legal and proper or not. In fact, the second respondent has found that the proceedings need to be kept in abeyance. While doing so, the second respondent has directed the licence to be suspended, which was not at all the issue in the appeal. The petitioner, who was appellant before the second respondent, was not put to notice about any possible action or an order under Section 16 of the Act, which aspect is still pending before the Commissioner of Excise. In that view of the matter, in my considered view, the second respondent, while directing the proceedings before the Commissioner of Excise being kept in abeyance, could not have directed the licence to be suspended.

9. The reliance placed on behalf of the respondent nos.3 and 4 on Section 40(c) of the Act, to my mind, is misplaced. Section 40 of the Act reads as under :

> *"**40. Appeals.—** Any person deeming himself aggrieved by any decision or order passed under this Act or the rules made thereunder by any Excise Officer other than the Commissioner may, within ninety days from the date of such decision or order, appeal against such decision or order, to the Commissioner; and where the decision or order is passed by the Commissioner including the order passed in revision under section 41 the appeal shall lie to the Chief Secretary. In disposing of the appeal*

the Commissioner or the Chief Secretary, as the case may be, may, after giving reasonable opportunity of being heard:—
(a) confirm the decision or order appealed against; or
(b) reduce, enhance or annul any amount involved in the decision or order appealed against; or
(c) pass such other orders as he may think fit.”

10. It can, thus, be seen that principally, the Appellate Authority can either confirm the decision or order appealed against or reduce, enhance or annul any amount involved in the decision or order appealed against or pass such other order as he may think fit. The provisions of Section 40(c) would not permit an order of the present nature, being passed, which would be entirely *dehors* the limited challenge and the dispute involved in the appeal, namely whether the proceedings before the Commissioner of Excise need to be kept in abeyance.

11. In the result, the petition is allowed. The impugned order to the extent of suspending the licence No.FCL-138, is hereby set aside.

12. The petition is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA