IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 632 OF 2016

M/s. Qualichem Industries Pvt. Ltd. … Applicant
vs.
The State of Maharashtra & anr. … Respondents

WITH
CRIMINAL APPLICATION NO. 633 OF 2016

Mr. Hemant Subhash Teke … Applicant
vs.
The State of Maharashtra & anr. … Respondents

Mr. D. B. Sawant, Advocate for the applicant.
Mr. V. V. Gangurde, A.P.P. for the State/respondent no.1.

Coram : Smt. R. P. SondurBaldota, J.
Date : 30th January, 2017.

P.C. :

1. This is the common order on the above two petitions directed against the orders dated 12th May, 2016 by which the Sessions court has allowed two revision applications filed by the State and set aside the orders of the trial Court impugned herein. The trial Court by it's order dated 29th January, 2016 allowed the applicant's application filed under Section 457 of Criminal Procedure Code ('Cr.P.C.', for short) for return of the property seized. Both the applications, in essence, are by the same person. The applicant in the second application who claims to be the importer and owner of the property in question is the director of the applicant company in the second application. The company claims to be the purchaser of the property.

2. The brief facts of the prosecution are that the Flying Squad of the State Excise Department on 25th July, 2015 had raided the godown of the applicant in the second application ('the applicant', for short) at Bhivandi and seized large quantity of Ethanol imported from China, U.K. and Canada. The applicant applied the return of the articles on the ground that Ethanol is a perishable item. It vaporises with the change of the atmosphere. Ethanol being alcohol in it's purest form, is not liquor and as such cannot be consumed by the human beings. It is used for the laboratory purposes. Further the applicant claimed that while importing the goods he has paid excise duty payable to Indian custom and Central Excise. Thereafter the Ethanol was cleared by the port authorities. Therefore the articles did not attract any of the provisions of the Maharashtra Prohibition Act, 1949.

3. The Investigating Officer had vehemently opposed the applications for return of the goods contenting that the applicant did not possess any licence of the Excise Ethanol and he had also not paid the duty of Rs.33,22,000/- as per Bombay Rectified Spirit rules, 1954.

4. The trial Court relying upon the decision of Division Bench of this Court in ***M/s. S. K. Raj & Co. vs. State of***

Maharashtra reported in 1994 (Cri) L. S., page 2022, observed that Ethanol AR is not intoxicating or a rectified spirit. It is alcohol in purest form. Hence prosecution under the Maharashtra Prohibition Act would be misconceived. It allowed the application of the applicant with an observation that since the prosecution of the petitioner by the Excise Department would not be tenable, the applicant would be entitled for the possession of the Ethanol and the same need not be kept in the custody of the Excise Department. While allowing the applications the trial Court had asked the applicant to execute indemnity bond of Rs.5,00,000/- with an undertaking that he shall deposit in the Court an amount of Rs.40,00,000/- towards the price of the Ethanol if he is not found entitled to the same at the final disposal of the proceedings against him.

5. In it's challenge to the order of the trial Court the State contended that the trial Court failed to appreciate that Ethanol may be diluted with water and it's consumption is very dangerous to humans. Also as per circular of Commissioner State Excise, Maharashtra State Mumbai, DySP/112015/4132/122/4 Mumbai dated 26th August, 2015 any person using Rectified Spirit including Ethanol is required to obtain Licence from Collector. It also pointed out that the importer of such spirit or alcohol is liable to pay special fee of @ Rs.200/- per bulk litre after levy of customs duty. This provision made by the State is not only to secure revenue but also to prevent misuse or diversion of imported alcohol for potable purposes.

6. In addition to the above submissions the Sessions

Court considered the relevant fact that the applicant has no authorised godown to preserve highly inflammable article of Ethanol. After the quantity of the Ethanol was seized by the State Excise Department, notice was issued by it to the petitioner. He did not reply to the same but had rushed to this Court with Writ Petition No.433 of 2015 challenging the action of seizure. Later the petition was withdrawn with liberty to approach the Collector, Dist. Solapur with a request to issue appropriate licences in terms of The Maharashtra Prohibition Act and other applicable laws, rules and regulations. The Sessions Court also noted that keeping such highly inflammable alcohol in place other than the place for which the licence is obtained is illegal. The applicant has not obtained licence from the Collector, Dist.Solapur. He has no authorised warehouse at Bhivandi. Therefore even as a time-gap arrangement he can not store Ethanol in a warehouse which is not authorised. Therefore even if his claim as the owner of the goods is accepted, he is not entitled to receive the goods on superatnama.

7. Mr. Sawant, the learned advocate for the petitioner states that on receipt of the goods, he would be forwarding the same to the purchasers. Even then there is substance in the contention of the State that without a licenced warehousing facility the highly inflammable articles cannot be returned to the applicant.

8. Mr. Sawant argues that it has already been held by the Division Bench of our High Court that with reference to the amendments to the Industries (Development and Regulation)

Act, 1951, that it is the Central Government alone which is the regulating authority as far as the pure spirit or Ethanol is concerned. Therefore the prosecution by respondent no.1 State would be illegal. Since the order challenged in the present Application is limited to the application filed under Section 457 of Cr.P.C. any contention raised by the petitioner as regards the Central Government being the regulating authority will have to be taken at the appropriate stage of the proceedings. Since the applicant does not have an authorised warehouse for storing highly inflammable goods i.e. Ethanol, he can not be permitted to receive the same. Hence, the applications are dismissed.

[Smt. R. P. SondurBaldota, J.]