THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.32637 OF 2017

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise (A.P.) appearing for the respondents.

2. This writ petition, filed under Article 226 of the Constitution of India, challenges the order of suspension of A-4 license of the petitioner passed by the Prohibition and Excise Superintendent, Amalapuram, who is respondent No.3 herein, *vide* proceedings in Rc.No.A2/367/2017, dated 18.09.2017.

3. The petitioner herein is the licensee of A-4 shop bearing licence *vide* L.No.EG/226/2017-19 dated 30.06.2017. Followed by registration of Crime No.102 of 2017 under Section 34(a) of the A.P. Excise Act, 1968 on the file of Prohibition and Excise Station, Amalapuram on 05.06.2017 against one Sri Pithani Bulleswara Rao, S/o.Suryanarayana and basing on the confession statement said to have been made by the said individual, respondent No.3 issued a show cause notice bearing Rc.No.A2/367/2017, dated 06.09.2017, asking the petitioner to show cause as to why the licence held by the petitioner should not be cancelled/suspended for the alleged violation of Rule 35 of the A.P. Excise (Grant of Licence of selling by shop and conditions of Licence) Rules, 2012 and condition No.1 of Form A-4 (Licence). Responding to the said show cause notice, the petitioner herein submitted his explanation and the same was acknowledged by the office of the Excise Superintendent on 12.09.2017. In the said explanation, the

petitioner herein denied the allegations made in the show cause notice issued by respondent No.3. Eventually, respondent No.3 issued the order *vide* proceedings in Rc.No.A2/367/2017, dated 18.09.2017, keeping the A-4 licence of the petitioner under suspension in exercise of the powers conferred under Section 31 of the A.P. Excise Act, 1968. This writ petition challenges the validity and legal sustainability of the said order.

4. According to the learned counsel for the petitioner, the order impugned is highly illegal, arbitrary and is opposed to the very spirit and object of the A.P. Excise Act, 1968 and the Rules framed there under. It is the further submission of the learned counsel that the confession statement of the accused in the above said crime cannot be the sole criterion for arriving at a conclusion against the petitioner herein. It is the further submission of the learned counsel that respondent No.3 also grossly erred in not considering the contents of the explanation offered by the petitioner herein.

5. On the contrary, it is vehemently contended by the learned Government Pleader that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and only after providing sufficient opportunity to the petitioner herein, respondent No.3 passed the order under challenge suspending the licence of the petitioner herein, as such, the petitioner cannot even complain violation of the principles of natural justice.

6. The information available before this Court manifestly reveals that in response to the show cause notice issued by

respondent No.3, the petitioner herein submitted a detailed explanation, dated 12.09.2017, categorically denying the allegations made against him. A perusal of the order under challenge reveals that respondent No.3, having referred to the explanation offered by the petitioner herein as one of the references, did not consider the contents of the explanation offered by the petitioner herein. Having called for explanation and having acknowledged the explanation offered by the petitioner herein, this Court does not find any justification on the part of respondent No.3 in not considering the contents of the explanation offered by the petitioner herein. The manner in which respondent No.3 considered the explanation cannot be approved. Respondent No.3 should have considered the validity of the contents of the explanation offered by the petitioner herein. The said exercise is conspicuously absent in the present case. Therefore, in the definite opinion of this Court, the matter requires reconsideration by respondent No.3 by taking into account the contents of the explanation admittedly submitted by the petitioner herein.

7. For the above said reasons, the Writ Petition is allowed setting aside the order passed by the Prohibition and Excise Superintendent, Amalapuram/respondent No.3 *vide* proceedings Rc.No.A2/367/2017, dated 18.09.2017, and the matter is remanded to respondent No.3 for fresh consideration after considering the explanation offered by the petitioner herein and after giving an opportunity of hearing to the petitioner herein. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 04.10.2017
AMD

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

<u>WRIT PETITION No.32637 OF 2017</u>

Date: 04.10.2017

AMD