HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos 24498, 24505,24522 and WP.No.24524 of 2017

COMMON ORDER:

These writ petitions are filed challenging the impugned orders suspending the licenses of the petitioners on the ground of violation of Rule 35 of A.P.Excise (Lease of Right of Selling by Shop and conditions of Licence) Rules, 2012 (for short "the Excise Rules") as such, they are being disposed of by common order.

Learned counsel for the petitioners submits that the allegation against the petitioners is that they sold the liquor to third persons. But once the petitioners sold the stock to third persons, they cannot have any control over the said stocks. He also submits that the allegation is not against the petitioners that they have stocked the liquor in unauthorized premises or nearby licence premises, but the allegation is that the petitioners sold the liquor to third persons, who are involved in crimes and certain stocks were seized from third persons and the basis for suspension is without any application of mind and unwarranted.

On the other hand, learned Assistant Government Pleader for Excise submits that to eliminate the unauthorized outlets, action was initiated and the petitioners have alternate remedy against the impugned orders.

It is to be seen that the allegation is that third persons involved in the crimes, who are running unauthorized outlets by purchasing the liquor from the petitioners shops. Rule 35 of the Excise Rules has no application to the said allegation. The allegation is that in all the cases, the accused stated that stocks seized from them were purchased from the petitioners shops. There is no allegation that the petitioners stocked the said stock un-authorizedly or kept it nearby licensed premises. Learned counsel for the petitioners relied on the judgment of **V.P.Thimmaiah v. Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Hyderabad[1],** wherein it is held that basing on the confessional statements of third persons in the crime in which the petitioners are not accused, cancellation of licence cannot be done and order of cancellation was set aside. The petitioners also state that the petitioners paid heavy licence fee and they are not entitled for refund of licence fee paid during suspension period. It is also stated by the counsel for the petitioners that show-cause notice was also issued for cancellation and on the same day, the impugned orders are also passed. In view of the same, as held by Full Bench in **Tappers Co-operative Society, Maddur v. Superintendent of Excise, Mahabubnagar[2],** wherein, it is held that no notice is required before order of suspension pending enquiry. It is also held that enquiry should not be allowed to be continued

[1] 2001(6) ALD 201
[2] 1984(2) L.J Page 1

unduly for long period. *Prima facie*, it appears that Rule 35 of the Excise Rules has no application and that already show-cause notices were issued to the petitioners.

In view of the same, it is open for the petitioners to submit explanation to the show-cause notices within a period of one week from today and thereafter, it is open for the respondents to take further action and pass final orders after affording opportunity to the petitioners without being influenced by any of the observations made in this order. Till passing of final orders, the impugned orders shall stand suspended.

Accordingly, these writ petitions are disposed of. As a sequel to the disposal of these writ petitions, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

25-07-2017
Nvl