THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.34574 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. An order of suspension of A-4 licence of the petitioner issued by the Prohibition and Excise Superintendent, Gudur, S.P.S.R. Nellore District, respondent No.2 herein, *vide* proceedings Rc.No.296/2017/A6, dated 10.10.2017, is under challenge in the present writ petition.

3. The petitioner herein is a licensee of A-4 shop and he is running the said shop in the name and style of M/s.Narasimha Wines at Potupalem Village of Gudur Rural Mandal, S.P.S.R. Nellore District. Followed by registration of Crime No.165 of 2017 on the file of the Prohibition and Excise Station, Gudur and on the basis of the confessional statement made by the accused in the said crime, respondent No.2 herein issued a show cause notice bearing Rc.No.296/2017/A6, dated 13.09.2017, alleging violation of the provisions of the A.P. Excise Act and the Rules framed there under. In response to the said show cause notice and the allegations contained therein, petitioner herein submitted an explanation on 04.10.2017. Eventually, respondent No.2 *vide* order under challenge, dated 10.10.2017, suspended the A-4 licence of the petitioner herein in exercise of powers conferred under Section 31(1)(b) of the A.P. Excise Act, 1968.

4. According to the learned counsel for the petitioner, the said order of suspension passed by respondent No.2 is highly illegal, arbitrary and unwarranted in the facts and circumstances of the case besides being opposed to the very spirit and object of the provisions of the A.P. Excise Act, 1968 and the Rules framed there under. It is also the submission of the learned counsel that respondent No.2 herein grossly erred in not taking into consideration the contents of the explanation offered by the petitioner herein and according to the learned counsel, the said action is a patent violation of principles of natural justice. It is also argued by the learned counsel for the petitioner that the confessional statement of the accused in the above said crime cannot be the sole criterion for initiating action under the provisions of Section 31 of the A.P. Excise Act, 1968.

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 in the absence of the same, the order impugned is not amenable for any judicial review under Article 226 of the Constitution of India. It is also the submission of the learned counsel that the petitioner herein also cannot make any complaint as to the violation of principles of natural justice as respondent No.2 herein passed the order under challenge only after affording complete opportunity to the petitioner herein.

6. There is absolutely no controversy that in response to the show cause notice, dated 13.09.2017, issued by respondent No.2 herein, the petitioner submitted an elaborate explanation on

04.10.2017, categorically denying the allegations made in the show cause notice. It is also clear from the said explanation that the petitioner herein raised a number of aspects for consideration of the respondents herein apart from requesting the respondents to furnish certain information as indicated therein. A perusal of the questioned order clearly discloses that except indicating the explanation of the petitioner herein as one of the references to the impugned order and except stating that the explanation offered by the petitioner herein was not satisfactory, respondent No.2 herein did not make any endeavour in the direction of considering the validity of the contents of the explanation offered by the petitioner herein. It is also the contention of the learned counsel for the petitioner in the present writ petition that the confessional statement of the accused in the crime registered cannot be the sole criterion for initiating proceedings under the provisions of Section 31 of the A.P. Excise Act, 1968. Since respondent No.2 herein failed to consider the above aspects, this Court is of the opinion that the matter requires reconsideration by respondent No.2 herein in accordance with law after considering the explanation offered by the petitioner herein.

7. For the aforesaid reasons, the Writ Petition is allowed, setting aside the order of suspension passed by the Prohibition and Excise Superintendent, Gudur, S.P.S.R. Nellore District, respondent No.2 herein, *vide* proceedings Rc.No.296/2017/A6, dated 10.10.2017, and the matter is remanded to respondent No.2 for fresh consideration in accordance with law after considering the explanation offered by the petitioner herein and after giving

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 : 16.10.2017
AMD

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.34574 OF 2017

Date: 16.10.2017

AMD