IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 15271 of 2017
Date of decision: 11.12.2017

M/s Maurya Distrillers & Bottlers Private Limited

……Petitioner

Vs.

Union Territory of Chandigarh and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.L. Goyel, Senior Advocate, with
Mr. Rohit Gupta, Advocate for the petitioner.

Mr. Suvir Sehgal, Senior Standing Counsel for U.T.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the order dated 05.07.2017, Annexure P.5 whereby the Excise and Taxation Commissioner, exercising the powers of Financial Commissioner, Union Territory, Chandigarh has suspended the licence dated 25.10.2002, Annexure P.1 of the petitioner in BWH-2 for 15 days from 8th July 2017 to 22nd July 2017.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a private limited company duly incorporated under the provisions of Companies Act, 1956. It had been granted BWH-2 licence in Form BWH-2 under Rule 3 of Bonded

Warehouse Licence on 25.10.2002, Annexure P.1, to run a Bottling Plant. The necessary fee had been paid by the licensee. The petitioner company procures Extra Neutral Alcohol (ENA) for use in manufacturing of portable liquor. The raw material, intermediate products and the finished goods are stored in different containers which are named as per requirements of law. The quantity as contained in different containers is duly recorded in the excise record as per Punjab Distillery Rules, 1932 (as applicable to UT of Chandigarh). The ENA received by petitioner is entered in the register maintained in Form D-18. After the manufacturing of portable liquor in blending VATs, the same is recorded in the register in Form D-13B from where the same is transferred to Holding Tanks. From the Holding Tanks, the portable liquor is transferred to the Bottling VATs. The quantity of the bottles so filled up is duly recorded in the register in Form VAT-13B. The business premises of the petitioner licensee were inspected by surprise by the Excise officials on 15.06.2017. Statement of the supervisor was recorded which did not contain the truthful picture of the affairs being carried out at the manufacturing premises of the petitioner-licensee. The figures mentioned in the show cause notice, Annexure P.2, did not match with the online figures maintained on the computer record of the Department. The inspecting officials recorded deficiency of stock in the storage VATs and found excess stock in the Blending VATs as well as finished goods. According to the department, the ENA in storage VATs was less whereas the portable liquor in the Blending VATs and finished stock was more in most of the cases. According to the petitioner, inspection was carried out at noon when the manufacturing process was being undertaken. It was not possible to record each and every entry immediately at the time the process was undertaken. In pursuance to the inspection, a notice dated 15.06.2017 was issued by the

Excise and Taxation Commissioner exercising the power of Financial Commissioner, U.T., Chandigarh, alleging that there was difference in the quantity of spirits and bottle liquor as per the physical stock and the stock registers maintained by the petitioner. As per the notice, ENA in storage VATs and Blending VATs was found excess by 27033.84 BL and a total stock of Quarts and Nips 3519 cases of all brands available were found short and 99 cases of Pints were found excess. Therefore, violation of Rules 17 and 21A of the Punjab Excise Bonded Warehouse Rules, 1957 (in short, "the 1957 Rules") and Condition No.14 of Rule 37 of Punjab Liquor Licence Rules, 1956 was allegedly found. In response to the notice, the petitioner appeared before the Excise and Taxation Commissioner and submitted reply dated 27.06.2017, Annexure P.3. The petitioner submitted that the stock had not been properly calculated at the time of inspection. It was further submitted that the inspection was conducted during the day time when the plant was undergoing production process and therefore some of the entries were not made in the books during the intermediate process. The petitioner submitted another reply on 27.06.2017, Annexure P.4. Vide order dated 5.07.2017, Annexure P.5, Excise and Taxation Commissioner rejected the contention of the petitioner and suspended the licence for 15 days for the period from 8.7.2017 to 22.07.2017. Aggrieved by the order, the petitioner filed an appeal before the Finance Secretary, UT, Chandigarh presuming him to be having powers of Financial Commissioner under Section 15 of the Punjab Excise Act, 1914 (in short, "the 1914 Act"). Inadvertently while filing the appeal, the petitioner had mentioned the same as under Section 15(7) read with Section 14 instead of Revision under Section 15(4) of the 1914 Act. Alongwith the appeal, petitioner had also filed an application for stay of operation of impugned order dated 5.7.2017. No stay was granted and thus the petitioner was forced to shut its operation from 8.7.2017. On appearance before the Finance Secretary on 13.07.2017 by the petitioner, the respondent Department had objected to the maintainability of the appeal saying that the order passed by the Excise and Taxation Commissioner was by virtue of powers exercised by him. Accordingly, no appeal was maintainable against the order of Financial Commissioner before the Finance Secretary. However, no notification was shown whereby the powers of Financial Commissioner were conferred upon the Excise and Taxation Commissioner. The Finance Secretary accepting the preliminary objection of the respondent, dismissed the appeal being non maintainable as according to him, no appeal laid against the order of Excise and Taxation Commissioner. However, copy of the said order had not been supplied to the petitioner till the filing of the present petition in this Court. Hence the instant petition by the petitioner.

3. We have heard the learned counsel for the petitioner.

4. On July 19, 2017, while issuing notice of motion to the respondents, it was recorded as under:-

> "Learned counsel for the petitioner has produced a copy of order dated 13.07.2017 passed by the Secretary, Excise and Taxation, Chandigarh Administration in Court today. The same is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.
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> A perusal of the said order shows that the appeal which has been filed under Section 15(7) read with Section 14 of the Punjab Excise Act, 1914 (in short, "the Act") as applicable to the Union Territory of Chandigarh, has been held to be not maintainable. It was urged by learned counsel for the petitioner that it was prayed before the said authority to treat the appeal as

revision which was not acceded to. Accordingly, learned counsel submits that no remedy of appeal or revision has been provided to the aggrieved party against the order passed by the Excise and Taxation Commissioner, exercising the powers of the Financial Commissioner, U.T., Chandigarh under Section 36 of the Act, suspending the liquor license on account of some aberration of the conditions of a liquor license.

Notice of motion to the respondents for 24.07.2017."

5. Thereafter, when learned counsel for the respondents-Union Territory was confronted that against the impugned order dated 05.07.2017, no appellate forum has been constituted by providing for remedy of appeal, learned counsel for the respondents had sought time by stating that the matter of creation of Appellate Authority under the 1914 Act as applicable to the Union Territory, Chandigarh, was under consideration before the Chandigarh Administration on 28.08.2017 and again on 03.10.2017.

6. Today, learned counsel for the respondents Union Territory, Chandigarh during the course of hearing produced a copy of the Gazette Notification dated 12.09.2017 whereby the Secretary, Excise and Taxation Commissioner, Chandigarh Administration has been declared as Appellate Authority to hear appeal from an original or appellate order of any Excise Officer. The copy of the said Gazette Notification is taken on record.

7. In view of the above position, the writ petition is disposed of with a direction that if an appeal is filed by the petitioner against the order dated 05.07.2017, Annexure P.5 passed by the Excise and Taxation Commissioner within 15 days from the date of receipt of a certified copy of this order before the Appellate Authority, the same shall be decided by the

said authority on merits expeditiously after hearing learned counsel for the parties by passing a speaking order in accordance with law.

(Ajay Kumar Mittal)
Judge

December 11, 2017
'gs'

(Raj Mohan Singh)
Judge

Whether speaking/reasoned **Yes**

Whether reportable **Yes**