**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 821 of 2017 (O&M)
Date : 09.08.2017.**

**M/s N.V. Distilleries Ltd. ...Petitioners**

**Versus**

**The State of Haryana and others ...Respondents**

***CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL***

Present: Mr. Sandeep Goyal, Advocate for the petitioners.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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***Anupinder Singh Grewal, J.***

The petitioners have sought quashing of order dated 26.09.2014 (Annexure P-6) passed by Collector-cum-Deputy Excise & Taxation Commissioner (Excise), Sonepat, (Collector-cum-DETC), whereby penalty of ₹27,30,000/- has been imposed upon them as well as the orders dated 30.04.2015 (Annexure P-18) and dated 26.05.2016 (Annexure P-20), whereby their appeal and review application respectively were dismissed by the Excise and Taxation Commissioner, Haryana.

2. The case set out by the respondents is that on 14.09.2014 a police party led by ASI Kuldeep Singh of Police Post, Sector-15, Sonepat detected a consignment of IMFL being transported in Truck No. HR-69A-1804 at Sector 12-15 crossing, Sonepat. Upon inspection and verification, it was found that IMFL was loaded in the truck of the following description and quantity :-

| ***Brand*** | ***No. of Cases*** |
|---|---|
| Besto Drygin | 137 labelled as for sale in Arunachal Pradesh |
| Besto Whisky | 318 labelled as for sale in Arunachal Pradesh |

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| ***Brand*** | ***No. of Cases*** |
|---|---|
| Royal Stag | 30 |
| Imperial Blue | 65 |

3. On being questioned, Sh. Rajesh Kumar, driver and Sh. Kala, cleaner could not produce any permit or pass in respect of the consignment of liquor and, therefore, the consignment along with the truck was taken into police custody. The driver and the cleaner were also arrested. On 15.09.2014 accused Rajesh Kumar and Kala along with the consignment of liquor were produced before the Collector-cum-DETC. Upon enquiry the driver of the vehicle informed the Excise Authorities that he had loaded 1100 cases of IMFL from the petitioner distillery, which included 871 cases of Besto Whisky and 229 cases of Besto Drygin for which no pass or permit or any other document was issued by the distillery. He also stated that out of these 645 cases were unloaded in a room near Fauji Canteen in Fauji Colony, Sonepat from where he loaded 30 cases of Royal Stag Whisky and 65 cases of Imperial Blue Whisky and thus, 550 cases of IMFL were there in his truck when he was taking the truck to Delhi before detection by the respondents-authorities. The respondents thereafter inspected the said room near L-13 vend of Sh. Ravinder Kumar at Fauji Colony, Sonepat pursuant to the statement of the driver. Upon inspection, the IMFL of following description and quantity was recovered.

| ***Brand*** | ***No. of cases*** |
|---|---|
| Besto Whisky & Besto Dry gin (Nips) | 553 For sale in Arunachal Pradesh |
| Episode Whisky (Quarts) | 9 |
| McDowell Whisky (Quarts) | 3 |
| Imperial Blue (Quarts) | 2 |
| Officers Choice Blue (Pints) | 1 |

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| ***Brand*** | ***No. of cases*** |
|---|---|
| Officers Choice Blue (Nips) | 2 |

4. Based on the statement of the driver, a show cause notice under Rule 6 of the Haryana Imposition and Recovery of Penalty Rules, 2003 (hereinafter referred to as the Rules of 2003) read with section 61(aaa) of Punjab Excise Act, 1914 (hereinafter referred to as the Act of 1914) (Annexure P-1) for penalty was issued and served upon the petitioners on 19.09.2014 asking them to appear before the Collector on 26.09.2014. The respondents-authorities also traced the ownership of the truck to Umed Singh, who was also issued notice. On 26.09.2014, Sh. Suresh Verma AGM (HR & Admn.) appeared on behalf of the N.V. Distilleries Ltd., Sonepat and submitted an application seeking adjournment of 20 days as their Accounts Manager was on leave. The application was rejected by the Collector by recording that it is not based on satisfactory reasons and the distillery had ample time to reply to the notice. The cleaner of the truck, Kala, appeared and requested that he be let off. The driver and owner of the truck were not present. The Collector-cum-DETC held the petitioners along with Umed Singh, Rajesh Kumar and Kala to be jointly and severally liable for the offences and imposed the maximum quantum of penalty @ ₹500/- per bottle, which amounted (455 cases i.e. 5460 bottles x ₹500) to ₹27,30,000/-. For the remaining 95 cases (1140 bottles) of other brands the owner, driver and cleaner were held liable for ₹5,70,000/- (1140 x ₹500). Thus, the liability of the petitioners distillery was limited upto ₹27,30,000/- and for the owner, driver and cleaner, it was upto ₹33,00,000/-. The appeal as well as the review application preferred by the petitioners was dismissed

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2017.08.10 11:04
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by the Excise and Taxation Commissioner, Haryana vide order dated 30.04.2015 (Annexure P-18) and order dated 26.05.2016 (Annexure P-20) respectively, which have been impugned in the instant petition.

5. It was contended by learned counsel for the petitioners that the petitioners were not afforded adequate opportunity of hearing, which resulted in violation of the principles of natural justice inasmuch as the request of the representative of the petitioners for an adjournment was rejected without any valid ground. In support of his contention, he relied upon judgment of a Division Bench of this Court in the case of ***Stelco Strips Ltd. Vs. State of Punjab and others,*** 2009(Vol. 19) VST 498. He further contended that the petitioners ought not to have been penalized for liquor, which has been confiscated from third party as Section 61(1)(aaa) of the Punjab Excise Act, 1914 does not authorise respondents to impose penalty unless the liquor has been seized from the possession of the petitioners. The petitioner distillery cannot be held liable as the liquor was not seized from it.

6. Per contra, learned State counsel has contended that the petitioners had been given adequate opportunity and 7 days' notice was furnished to them in terms of Rule 5 of the Rules of 2003 and in case further time had been granted to the petitioners it could have resulted in destruction of evidence.

7. It would be necessary to set out Sections 61(1), 61(1)(a), (aa), (aaa), (c) and (i) of the Act of 1914 as applicable to the State of Haryana:-

> ***Section 61 for Haryana*** *(1) Whoever, in contravention of any section of this Act or any rule, notification issued or given there under or order made, or of any licence permit or pass*

Swarnjit Singh
2017.08.10 11:04
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*granted under this Act.*

*[(a) manufactures or collects any intoxicant; or*

*(aa) imports, exports, transports or possesses any intoxicant other than liquor; or*

***[(aaa) imports, exports, transport or possesses any liquor; or]***

*(b) xxx xxx xxx xxx xxx xxx xxx xxx*

*(c) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than tari,*

*(i) shall, for offences covered by clause (aaa), be liable to payment of penalty of not less than fifty rupees and not more than five hundred rupees per bottle of 750 milliliters or part thereof of liquor in respect of which offence is committed, which may be imposed by the Collector in the manner prescribed except when the case is referred to by the Collector to the Court for trial; and*

*[Provided that the person punishable for an offence under clause (aaa) and facing trial in court, shall have the option, to be exercised in writing in the court during the pendency of trial, to compound the offence by payment of penalty to be decided by the court which shall not be less than five hundred rupees and not more than one thousand rupees per bottle of 750 milliliter;]*

8. The relevant rules of the Haryana Imposition of Penalty Rules, 2003 read as under:-

*xxx xxx xxx xxx xxx xxx xxx xxx*

***5. Notice to offender (Section 59). -*** *On receipt of reference, the Collector shall serve on the offender or persons concerned, who committed an offence including the owner or occupier of any premises and owner of a vehicle where from such liquor has been found, a notice in form I, requiring him or them of a date (not later than seven days of issuance of notice) and at a place to be specified therein,* ***either to attend in person or through an authorized agent to produce or to a cause to be produced any evidence on which such person or persons may rely in his or their support."***

Swarnjit Singh
2017.08.10 11:04
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> *6.* ***Determination of amount of penalty Section 59.*** *- The Collector, after taking such evidence as the person may produce and after making such enquiry, as he may deem proper, on being convinced and satisfied that offence was committed under the Act, shall determine the amount of penalty recoverable from the offender or person concerned. Collector shall pass order for confiscation of liquor under Section 78."*
>
> *xxx xxx xxx xxx xxx xxx xxx xxx xxx*
>
> *13. The licensee shall agree to the posting of a Government excise establishment to his distillery for the purpose of ensuring the due observance of these rules and for watch and ward. This establishment shall consist of an Excise and Taxation Officer and as many Inspectors] and peons as the [Excise Commissioner] shall deem sufficient for the requirements of the distillery. This staff shall be subject to the inspection by Financial Commissioner and the Collector and be under the Administrative control of the Collector."*

9. Section 61 (1) (aaa) and C (i) of the Act of 1914 stipulates that import, export, transport or possession of liquor in contravention of the Act, rules or licence would invite penalty of not less than ₹ 50 and not more than ₹500 per bottle of 750 mili litres or part thereof. Thus minimum penalty of ₹50 per bottle can be imposed for minor violation while in cases of grave or serious nature the penalty upto ₹ 500 per bottle can be levied.

10. Rule 5 of the Rules of 2003 provides that the Collector after reference to him shall issue notice to the alleged offender to attend the proceedings not later than 7 days either in person or through an authorised agent to produce evidence in his support. The notice of not less than 7 days in effect provides an outer limit of 7 days in order to expedite the proceedings. One of the objects could be that the evidence should not be destroyed or manufactured by the offender. It is, however, important to note that excise authorities cannot be helpless in case some more time is granted

Swarnjit Singh
2017.08.10 11:04
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to the alleged offender to produce his defence as nothing stops them from raiding any premises or apprehending any suspects in the meantime. If the time sought for producing defence is utilised for eliminating evidence or causing any hindrance to the excise authorities, the Collector would also be free to record the same or even draw adverse inference thereof but to say that in no circumstances, any further time or adjournment would be granted could have disastrous consequences and give a carte blanche to the Collector to act arbitrarily and whimsically. There could be occasions when requests for adjournment are genuine and for bona fide reasons while in certain cases, the requests could be on flimsy grounds or to delay the matter. It would thus be within the realm of discretion of the Collector to take decision on request for adjournment but of course this discretion has to be exercised judiciously and with due application of mind to the facts of the case.

11. It is well settled that an order visiting penal consequences upon a person or entity cannot be passed without affording it opportunity of hearing. We may refer to the judgment of the Division Bench of this Court cited by the learned counsel for the petitioners in the case of **Stelco Strips Ltd. Vs. State of Punjab and others, 2009 (Vol.19) VST 498.** It pertains to a matter where the proceedings were re-initiated and finalised after over a year of the detention of the goods and the release of the vehicle. It was held that Section 14 (B) of Punjab General Sales Tax Act, 1948 which stipulates that an order should be passed within 14 days from the day the goods and vehicle are seized is only directory in nature and failure to decide such proceedings within time prescribed will not result in abatement of

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2017.08.10 11:04
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proceedings as it is necessary to comply with the principles of natural justice.

12. Rule 5 of the Rules of 2003 nowhere stipulates that the Collector cannot grant any further time than the notice period of less than 7 days before adjudicating the matter. All it says is that in the first instance, the notice cannot be of more than 7 days. If we were to interpret Rule 5 to mean that no further time can be granted to the offender/assessee and the order of penalty would have to be passed within 7 days, the consequences would be disastrous. The authorities would get licence to act arbitrarily and whimsically and even bona fide and genuine requests to file reply would be denied. Thus we would interpret Rule 5 in a manner which would adhere to the principles of natural justice rather than that which defeats them. We, thus, hold that Rule 5 providing for notice of not more than 7 days is directory and in appropriate cases more time could be granted by the Collector in furtherance of the principles of natural justice.

13. In the case of **Dharampal Satyapal Limited vs. Deputy Commissioner, Central Excise 2015 (8) SCC 519,** it has been held by the Supreme Court that fair hearing is one of the pre-requisites of natural justice and there may be situations where the absence of hearing would not have caused any prejudice to the person against whom action is taken. The validity of such orders has to be tested by the Court on the touchstone of prejudice. It is not for the authority to dispense with opportunity of hearing to the affected party by holding it would make no difference or no prejudice shall be caused to it. It is only for the Court to consider as to whether any purpose would be served in remanding case keeping in mind whether any

Swarnjit Singh
2017.08.10 11:04
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prejudice is caused to the person against whom the action is taken.

14. We now proceed to refer to case put up by the petitioners before the appellate authority and response thereto by the respondents only for the purpose of determining whether it was necessary for the Collector to consider the reply before imposition of penalty and whether in the absence of opportunity to file reply prejudice has been caused to the petitioners. This, however, shall not be construed as an expression on the merits of the controversy.

15. The defence set up by the petitioners before the appellate authority is that in terms of Punjab Distillery Rules, 1932 (hereinafter referred to as Rules of 1932) as applicable to the State of Haryana, the entire functioning of the distillery is under the control of Excise Department. No product can be removed or sold without pass/permit or authorisation by the competent authority of the Excise Department. The raw material and stock of finished goods are invariably kept and operated through revenue locks and lock tickets by the staff of the Excise Department deputed at the distillery and not even a single bottle of liquor can be taken out from the distillery without the permission of the Excise Department. Six Excise Inspectors and one Assistant Excise and Taxation Officer are on duty at the distillery. It has referred, *inter alia*, to Rules, 13, 14 and 15 of the Rules of 1932, which read as under :-

> *"13. The licensee shall agree to the posting of a Government excise establishment to his distillery for the purpose of ensuring the due observance of these rules and for watch and ward. This establishment shall consist of an Excise and Taxation Officer and as many Inspectors] and peons as the [Excise Commissioner] shall deem sufficient for the requirements of the distillery. This staff shall be*

Swarnjit Singh
2017.08.10 11:04
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> *subject to the inspection by Financial Commissioner and the Collector and be under the Administrative control of the Collector.*
>
> *14. The licensee shall, provide within the distillery enclosure an office for the inspector as well as quarters to be approved by the Financial Commissioner, for the inspector and the peons who will be required to remain within the distillery enclosure on night duty.*
>
> *15. The licensee shall, if required by the Financial Commissioner, provide residential quarters for the Government excise establishment posted in the Distillery."*

16. It was also stated that the manufacturing capacity of the distillery is fixed and the number of receptacles, barrels, bottles and other containers are duly registered with the department along with their capacities. The stocks held in these receptacles corresponds to the approved manufacturing capacity of the distillery. Unless it is established that these stocks are disproportionate to the approved manufacturing capacity, case for unauthorised removal of liquor would not be made out. The periodic inspection was carried out by the Excise officials and they did not observe any irregularity in the functioning of the distillery. It was further stated that the penalty under Sections 61(aaa) of the Act of 1914 read with Rules 5 and 6 of the Rules of 2003 can be imposed upon a person, who is in possession of any liquor or causing movement of any intoxicants without a valid licence. The petitioners were not found to be in possession of any alleged illicit liquor at the time of checking. The petitioners had also taken several other grounds including that the alleged brands are not related to their distillery and that others had manufactured them illegally at unauthorised places without any knowledge of the petitioners. The department has not

Swarnjit Singh
2017.08.10 11:04
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provided any sample of the confiscated bottles or liquor and imposed the penalty without opportunity of hearing and it has solely relied upon the statements of the truck driver and cleaner, who are not in employment of the petitioners nor is the truck registered in the name of the petitioners. It is also stated that the alleged labels on the recovered liquor (For sale in Arunachal Pradesh) with no hologram affixed for sale in Haryana, is not within the knowledge of the petitioners and they could not have been held liable for the same absent any evidence to this effect.

17. The Excise Authorities, however, have concluded that the petitioners were hand in gloves with the smugglers and their malafide intention was writ large as the labels depicting "For sale in Arunachal Pradesh" were found in 455 cases of recovered bottles from the truck in question and by issuing such labels, they had tried to mislead the concerned authorities.

18. These are, however, issues which ought to have been decided by the Excise Authorities after granting adequate opportunity to the petitioners to submit their reply. In the case at hand request for adjournment was sought on the ground of the Accounts Manager being on leave. We do not find that such a request at the very first instance is such which would merit outright rejection. It is possible that the petitioners were merely buying time and wanted to delay the matter. However, it is equally possible that they wanted to prepare adequate defence after examining the accounts. It would thus be difficult to conclude with absolute certainty as to whether the request was bona fide or a ruse to delay the proceedings. We are nevertheless of the view that some time should have been granted if the

Swarnjit Singh
2017.08.10 11:04
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request for adjournment had been made. It was the first request and granting some time even of a few days would not have affected the proceedings. Declining the request on the first date itself would not be in consonance with the principles of natural justice. This is more so when the maximum penalty of ₹500/- per bottle has been imposed upon the petitioners. The oral statements of the driver and others and various documents are being relied upon by the authorities without any reply thereto which has certainly prejudiced the petitioners.

19 We hasten to reiterate that nothing which we have observed in this judgment will have any bearing whatsoever on the merits of the case.

20. For these reasons, the petition is allowed. Impugned orders dated 26.09.2014 (Annexure P-6) passed by Collector-cum-Deputy Excise & Taxation Commissioner (Excise), Sonepat, (Collector-cum-DETC), whereby penalty of ₹27,30,000/- has been imposed upon them as well as the orders dated 30.04.2015 (Annexure P-18) and dated 26.05.2016 (Annexure P-20), whereby their appeal and review application respectively were dismissed by the Excise and Taxation Commissioner, Haryana are set aside. The case is remanded to the Collector to decide afresh within three months after granting opportunity to petitioners to file reply.

**(S.J. VAZIFDAR)**
**CHIEF JUSTICE**

**(ANUPINDER SINGH GREWAL)**
**JUDGE**

**Date :09.08.2017.**
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**Whether speaking/reasoned? Yes/No**
**Whether reportable? Yes/No**

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2017.08.10 11:04
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