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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 4666/2016 & CM No. 19379/2016

M/S PUNJAB EXPO BREWERIES PVT LTD ..... Petitioner

Through: Ms Rana Parween Siddiqui, Advocate.

versus

THE EXCISE COMMISSIONER DELHI AND ORS ..... Respondents

Through: Mr Devesh Singh, ASC (Civil), GNCTD with Ms Neelam, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **25.08.2017**

1. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "(a) set aside the impugned order dated 21.01.2016 passed by the respondent No.2 (Annexure P-10).
>
> (b) set aside the order dated 23.12.2014 passed by Respondent no.1 confirming the order passed by the respondent No.3 (Annexure P-6);
>
> (c) set aside the demand dated 07.03.2014 raised by the respondent No.3 (Assistant Commissioner, Excise) and confirmed by respondent No.2 and grant permission for the destruction of stock of liquor without payment of excise duty (Annexure P-4)"

2. The learned counsel for the petitioner has limited the challenge to the impugned orders to only a solitary ground that the petitioner does not have any liability to pay excise duty as the stocks of liquor (hereafter 'stocks') do not belong to it.

3. It is stated that the petitioner had applied for transfer of stocks from one bonded warehouse to another. The stocks, which were sought to be transferred belonged to Patiala Distilleries and Manufacturers Ltd. and Tilak Nagar Industries Ltd. It is stated that the Tilak Nagar Industries is the parent/holding company of the petitioner.

4. The petitioner's application for transfer of the stocks was allowed by an order dated 26.04.2013. However, it is stated that the entire stocks could not be transferred on or before 30.04.2013 (that is, before the expiry of the relevant licence). The petitioner once again applied for transfer of stocks, which was again denied. By a communication dated 07.03.2014, respondent no.3 (Assistant Commissioner, Excise) informed the petitioner that "*the competent authority has rejected your request and ordered to destroy the stock after deposit of Rs. 3902845.91/- on account of excise duty*".

5. Although, the petitioner may be aggrieved by denial of the petitioner's request for transfer of stocks, the same is not pressed before this Court. As stated above, the only issue canvassed before this Court is in regard to the levy of excise duty.

6. Aggrieved by the aforesaid communication (order) dated 07.03.2014, the petitioner preferred an appeal (appeal no.11/2014) before the Commissioner of Excise, Government of NCT of Delhi. The said appeal

was also rejected by the Commissioner of Excise by an order dated 23.12.2014. Being dissatisfied with such rejection, the petitioner preferred a second appeal (Second Appeal no.20/2015) before the Court of the Financial Commissioner, Government of NCT of Delhi. This was also rejected by an order dated 21.01.2016, which is impugned herein.

7. The learned counsel for the respondents has drawn the attention of this Court to Rule 56 of the Delhi Excise Rules, 2010, which contains provisions regarding left over stock. In terms of the Rule 56(b) of the said Rules, in case a licensee is unable to dispose of such stocks, in part or in full, within the stipulated period, the same is to be surrendered to the Deputy Commissioner along with the list mentioning the quantity and the brand of the undisposed stock. The Deputy Commissioner is empowered to dispose of the stocks at such value as determined by him. He pointed out that in the present case there is yet another controversy as to whether the stock was fit for human consumption and in view of the same, the stocks were liable to be destroyed.

8. He submits that in this view, the decision of the Financial Commissioner cannot be faulted.

9. There can be no quarrel as to the applicability of provisions of Rule 56 of the Delhi Excise Rules, 2010 (even the petitioner relies on the said Rule). However, the principal question to be considered is not whether the stocks were required to be destroyed or transferred but whether the petitioner was liable to pay any excise. The petitioner claims that it is not the owner of the stocks; the stocks belong to Tilak Nagar Industries Ltd.,

which is petitioner's parent/holding company. Thus, at best the petitioner's request for transfer of stock could be denied, however, the petitioner could not be mulcted with any liability towards excise duty.

10. A perusal of the impugned orders do not indicate that this aspect was considered by the Financial Commissioner. Accordingly, the impugned order dated 21.01.2016 is set aside and the matter is remanded to the Financial Commissioner to further examine whether any liability for payment of excise duty could be imposed on the petitioner.

11. It is clarified that this Court is not interfering with other aspects dealt with by the Financial Commissioner; that is, whether the stocks in question are to be destroyed or not.

12. The petition along with the pending application is disposed of.

VIBHU BAKHRU, J

AUGUST 25, 2017
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