

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 8291 OF 2018

Hindustan Distilleries, Ahmednagar .. Petitioner

versus

The State of Maharashtra and others .. Respondents

Mr R. R. Mantri, Advocate for petitioner

Mr S. P. Tiwari, Assistant Government Pleader for respondents

CORAM : SUNIL P. DESHMUKH, J.

DATE : 24th July, 2018

ORDER :

1. Heard learned counsel for petitioner and learned Assistant Government Pleader for respondents.

2. Learned counsel for petitioner submits that under due authorization in 2007 from concerned authority, petitioner has been dealing with in 90 ml bottles and the same is continued since then without any interruption. However, certain discrepancies were purportedly noticed upon a visit in 2017, *inter alia*, it was claimed that 90 ml bottles were not approved by competent authority. Petitioner under the circumstances by way of abundant precaution had applied for approval for 90

ml. bottles to respondent no. 3 and under an order dated 05-04-2007, approval had been granted by said authority. He submits that yet, an order has been passed on 11-07-2018. He submits, petitioner had been allowed 90 ml. bottles and long thereafter, issue about competency of approving authority is being raised. He purports to refer to certain documents which according to him depict concerned authority had been granting approval from time to time. He submits, even while competent authority claimed, has granted approval, impugned order has been passed.

3. Petitioner is aggrieved by order dated 11-07-2018 directing deposit of excise duty of ₹ 1,30,31,712/- impugned in present writ petition, contending the same to be wholly misconceived and is untenable and its untenability stared in the face of position as would emerge on record that the allegation about non authorization to sell 90 ml. bottles is absolutely foundationless. There is more than sufficient record indicating that the sale of 90 ml. bottles has been authorized. In the circumstances, impugned order is outside the powers, authority and jurisdiction of the Commissioner. The order, according to learned counsel, is classic case of colourable

exercise of power. He, therefore, urges to quash and set aside impugned order.

4. On the other hand, learned Assistant Government Pleader appearing on behalf of respondents submits that against order impugned in present writ petition, petitioner has alternate efficacious remedy by way of appeal under section 137 of the Maharashtra Prohibition Act and the same ought not to be bypassed which would deprive the parties to deal with matter on facts and of a forum and further that writ petition in the scenario shall not pre-empt the same.

5. Learned counsel for petitioner, however, submits that the petitioner may not be dragged to alternate forum, for, the order impugned is grossly untenable and alternatively urges for protection during pendency of aforesaid process.

6. In the circumstances, since quite a few disputed questions are being raised, it appears to be expedient, petitioner approaches the appellate authority within a period of two weeks from today. It is open for the petitioner to apply for interim relief and till decision on the same, the authority may not insist upon payment of amount under the order impugned.

7. Having regard to aforesaid, petitioner shall deposit to show its *bonafides* a sum of Rs. 10,00,000/- with the excise department within aforesaid period and fate of the amount would be determinable in decision by appellate authority in the appeal. Appellate authority to proceed with appeal expeditiously and decide the same preferably within a period of three months from the date of receipt of writ of this order.

8. With aforesaid, writ petition stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd/-