IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1102 OF 2018

Stone Wines } Petitioner
versus
The Administrator, }
Union Territory of }
Daman and Diu and Anr. } Respondents

Mr. S. S. Chougule i/b. Ms. Madhusmita Saud for the petitioner.

Mr. Shrishailya S. Deshmukh for the respondents.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.

DATED :- FEBRUARY 26, 2018

P.C. :-

1. We have heard both sides.

2. The petitioner challenges an order, which, though styled as a notice, according to the petitioner, visits him with serious consequences.

3. The communication/order/notice at page 53 of the paper book reads as under:-

> “No. 2/1/EXC-EST/Cashless/2017-18/
> Part-I/1842
> U. T. Administration of Daman & Diu,
> Office of the Commissioner of Excise,

Excise Department, Daman,
Dated 17 JAN 2018

Read:- 1) Show cause notice cum suspension order vide no. 2/1/EXC-EST/Cashless/2017-18/379 dated 27/06/2017 issued to 12 licence holders.

2) Your reply dated 11/07/2017.

3) Order no.2/1/EXC-EST/Cashless/2017-18/1041 dated 05/08/2017 for compounding the offence by imposing fine and penalty of Rs.92,59,808/-.

4) Order dated 08/01/2018 of Hon'ble Administrator, DD & DNH in Excise appeal no.34/2017.

NOTICE

I am directed to inform you that you have to deposit the fine and penalty amount of Rs.92,59,808/- imposed vide order dated 05/08/2017 by the Commissioner of Excise, Daman and Diu in the government treasury by obtaining necessary chalan from Excise Department, Daman.

You are therefore directed to deposit the said amount in the government treasury within 15 days from the date of this notice, failing which further action will be initiated by the Department for cancellation of licence held by you and also initiate the proceedings for revenue recovery as per the provisions of Goa, Daman & Diu Excise Duty Act & Rules, 1964.

(Charmle Parekh)
Deputy Commissioner of Excise,
Daman."

4. A perusal of the same would indicate that the show cause notice-cum-suspension order was served on the petitioner and a reply was filed to the allegations in the show cause notice. Then, an order of compounding of the offences by imposing fine and

penalty of Rs.92,59,808/- was passed on 5th August, 2018. Thereafter, an appeal was filed being Excise Appeal No. 34 of 2017, on which, an order dated 8th January, 2018 was passed and the notice seeks to recover this sum.

5. The argument is that there is no power to recover this sum if the offences are compounded. In that regard, our attention was invited to section 39A of the Goa, Daman and Diu Excise Duty Act, 1964.

6. Upon a perusal of the show cause notice, which was issued to the petitioner and others, it is evident that the allegations are serious. The wholesalers like the petitioner are alleged to have sold liquor to the consumers and not to the licence holders for wholesale/retail sale of liquor, which, in fact, is required to be done by the wholesalers as per section 5 and Rule 19 of the Goa, Daman and Diu Excise Duty Rules, 1964. On such allegations, the licence holders were informed that they have conducted the business of selling liquor of huge quantity in cash without following the provisions of law. They have also violated and contravened the provisions of Rule 90, under which, liquor licence for wholesale is granted to them. It is in these circumstances, it is alleged that the provisions of section 5 and Rules 19 and 90 of the Act and the Rules have been violated. The

order was passed to place the licences under suspension and direct all the licence holders to show cause why action should not be taken against them under sections 30 and 16 of the Act and the Rules. Section 16 of the Goa, Daman and Diu Excise Duty Act, 1964 reads as under:-

> "**16. Power to cancel licence. -** (1) A licence or permit granted under this Act may be cancelled by the Commissioner for good and sufficient reasons to be recorded in writing, after giving an opportunity to the person concerned for making any representation and after considering such representation.
>
> (2) In particular and without prejudice to the generality of sub-section (1), the Commissioner may cancel or suspend any licence or permit granted under this Act, -
>
> (a) if any fee or duty payable by the holder thereof be not duly paid; or
>
> (b) if there is any breach by the holder of such licence or permit, or by his servants, or by any one acting with his express or implied consent on his behalf, of any of the terms or conditions of such licence or permit or of the terms of any agreement executed under section 17; or
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> (c) if the holder thereof is punished for any offence against this act, or of any cognizable or non-bailable offence; or
>
> (d) if the conditions of the licence or permit provide for such cancellation or suspension.
>
> (3) The holder of a licence or permit shall not be entitled to any compensation for the cancellation or suspension thereof under this section nor to a refund of any fee paid or deposit made in respect thereof."

7. Thus, there is power to cancel the licences or permits for good and sufficient reasons to be recorded in writing and after giving an opportunity to the person concerned of making any representation and after considering such representation. Then,

by sub-section (2) of section 16, the broad powers of cancellation or suspension of the licence or permit can be exercised and the consequences are that the holder of licence or permit shall not be entitled to any compensation for cancellation or suspension thereof under this section nor to refund of any fee paid or deposit made in respect thereof. By section 30, the penalty for contravention of provisions has been provided. That section reads as under:-

> "**30. Penalty for contravention of provisions.** - Whoever, in contravention of this Act, or of any rules or orders made thereunder, or of the conditions in any licence or permit obtained under this act, -
>
> (a) imports, exports, transports or possesses any excisable article; or
>
> (b) manufactures or produces any excisable article or bottles liquor; or
>
> (c) constructs or works any distillery brewery or pot still; or
>
> (d) uses, keeps, or has in his possession any materials, still, utensils, implements or apparatus whatsoever for the purpose of manufacturing any excisable article; or
>
> (e) sells any excisable article or foreign liquor; or
>
> (f) draws toddy from any tree;
>
> shall, on conviction before a Magistrate, be punished for each such offence with -
>
> (i) rigorous imprisonment which may extend to seven years, with or without fine, if the offence relates to intoxicating drug or opium as defined in clauses (kkk) and (oo) respectively, of section 2;

(ii) a fine which may extend to two thousand rupees or imprisonment for a term which may extend to two years or with both, if the offence relates to any other matter;

Provided that in respect of any offence under clause (f), the amount of fine may be such lower figure as may be prescribed."

8. Thus, this is a power to convict and punish. The power in that regard vests in the Magistrate.

9. On such a show cause notice alleging violations of the law and after suspending the licences, we do not see how the petitioner filed a reply on 11th July, 2017 and thereafter straight away sought compounding of the offences. In that reply, it denied each and every allegation. It applied for a stay of the order of suspension of its licence by approaching a higher authority. It is in these circumstances, it was expected of the authority to have proceeded and taken the show cause notice to its logical end. We do not see how an application was entertained for compounding of offences and thereafter that was disposed of by seeking to recover only a sum of Rs.92,59,808/- as a fine and penalty.

10. We do not decide the larger question and the issues posed for our consideration by the petitioner's advocate that in compounding of offences and in exercise of the powers conferred by section 39A of the Act, no penalty and fine could have been

recovered and exceeding the sum specified in sub-section (1) of section 39A for the simple reason that we are spared from considering this issue as we brought to the notice of the petitioner's advocate that there was no compulsion on the petitioner to compound the offences. Equally, the Commissioner need not have obliged the petitioner in this manner. We can foresee that in such matters tomorrow if show cause notice-cum-suspension order is issued alleging violations of the terms and conditions of the licences as also breaches of the law, but a licence holder can then get away with a meager punishment of imposition of penalty/fine, the licence would be restored and all this can come about with active connivance of the officials exercising powers under the Act and the Rules. If the show cause notice is issued and has to be taken to its logical end, which indeed was the step taken, then, we do not see why an application was entertained and for compounding the offences. Possibly, both thought that on a payment of some amount and which is meager, the entire proceedings can be closed.

11. Now that the petitioner has challenged the imposition of fine and penalty, more than him, the respondents are placed in an awkward position. Very casually, the Commissioner of Excise Mr. Sandeep Kumar Singh has filed an affidavit. In this affidavit, he

says that licence has been issued to the petitioner-Sanjay Patel. He has violated the provisions by operating the licence for sale of liquor as wholesaler by making retail sales. Yet, he seems to feel nothing about it. He says that a notification dated 23rd December, 2010 cited by the petitioner for transportation of liquor would not apply for that would apply when the liquor is transported from one place to another within the district of Daman and Diu by any person without a permit issued in accordance with the provisions of the Act and the Rules. In the instant case, the allegation is that the wholesaler has sold quantity of liquor to any one without permit. It is in these circumstances and by alleging that the licence holder did not maintain true account of the stock of purchases and sale of liquor that there is clear violation of the law and particularly Rule 101 of the Rules.

12. We do not see then any reason for compounding the offences. With all this, the Commissioner seems to be contradicting himself. After having issued a show cause notice-cum-suspension order, there was no reason to be kind and sympathetic towards this petitioner. He is not the only one, but there are 12 others who are stated to have indulged in similar acts.

13. As a result of the above discussion, we allow this petition. We quash and set aside the order of compounding of the offences. We direct the Commissioner or the competent authority to now adjudicate the show cause notice in accordance with law and without being influenced by the order of compounding which we have quashed and set aside. All contentions on merits of the allegations in the show cause notice are kept open.

14. We warn the Commissioner that hereafter his exercise of power in this manner would visit him with such strictures as are necessitated by this court for the serious lapses committed by a public servant and thereafter he would have to face not only disciplinary action, but even prosecution under the Prevention of Corruption Act, 1988. We presently do not issue such directions.

15. With the aforesaid directions, the writ petition is disposed of.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**