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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL WRIT PETITION NO.1299 OF 2017***

|                                 |                |
|---------------------------------|----------------|
| Atul Chamanalal Mehta           | ..Petitioner.  |
| V/s.                            |                |
| The State of Maharashtra & Ors. | ..Respondents. |

Mr.Prakash Shah with Mr.Jas Sanghvi for the petitioner.

Mrs. M.M.Deshmukh, APP for the respondent-State.

***CORAM: NITIN W.SAMBRE, J.***

***DATE : MARCH 6, 2018***

**PC.:-**

Heard respective parties.

2. The petitioner who is in the business of importing Ethyl Alcohol of high purity of 99.9% suffered an order of seizure at the hands of respondents for want of appropriate compliance under the provisions of the Maharashtra Prohibition Act, 1949 ('the Act' for short).

3. It is the case of prosecution that the petitioner was in law, not permitted incompetent to import industrial alcohol in

absence of licence under the provisions of the Act and the Bombay Rectified Spirit Rules, 1951 ('the Rules' for short). Support is drawn by the respondents from a circular dated August 26, 2015 to demonstrate their source of power for carrying out the act of registration of an offence and seizure of industrial alcohol.

4. The learned Magistrate upon application, being Criminal M.A.No.352/2016 filed by the applicant, ordered release of the container, however, refused to release the alcohol vide order dated April 13, 2016.

5. In Criminal Revision No.48/2016, the learned Sessions Court confirmed the order of the learned Magistrate vide order dated January 21, 2017 and rejected the same. As such, this writ petition for release of the seized goods i.e. Ethyl Alcohol.

6. The learned counsel for the petitioner while drawing attention of this Court to the Division Bench judgment delivered on December 13, 2017 in Writ Petition No.8548 of 2004 along with other connected matters would submit that the provisions of Rules 23 to 62 of the Bombay Denatured Spirit Rules, 1959 ('the Spirit Rules' for short) regulating the possession, use, sale and import, export and transport of denatured spirit was held to be

*ultra vires* and unconstitutional and was accordingly struck down. According to him, said provisions having been set aside, the State Government ceases to have any control over the property which was seized by them. He would urge that the Division Bench had further given a declaration that no licence is required under the Bombay Prohibition Act for sale, purchase, transport, possession, storage, dehydration, import and export of denatured spirit. He would submit that in view thereof, the petitioner is entitled for release of the property as respondents lack any legal authority to seize and continue to be in possession of the seized materials.

7. Support is also sought to be drawn from the Division Bench judgment of this Court in the matter of *M/s. K.Raj and Co. V/s. State of Maharashtra*<sup>1</sup> so as to contend that the ethanol AR is concerned, it cannot be equated from intoxicant liquor. Para 9 of the said judgment is relevant, which reads thus :-

*“9. Applying the ratio of the aforesaid case it is abundantly clear that as far as the product Ethanol AR is concerned, the same cannot be equated with intoxicating liquor. Merely because the product can be used for the purpose of*

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<sup>1</sup> 1994 Cri. L.J. 2022

*manufacturing intoxicating liquor would not ipso facto make it intoxicating liquor. The product in fact is used for several industrial, chemical purpose and it is an analytical reagent used by various Government and semi-Government and other institutions for various other purposes. Hence the product as it is cannot be termed an intoxicant liquor so as to attract the provisions of the Bombay Prohibition Act”.*

8. *Per contra*, the learned APP would strongly opposed the claim and submitted that the judgment of the Division Bench of this Court in the matter of Writ Petition No.8548 of 2004 is the subject matter of challenge in the Apex Court in which the Apex Court has already issued notice. She would further submit that the Division Bench in the matter of *M/s.K.Raj & Co.* (supra) was also challenged in the Apex Court and is under consideration before the Constitution Bench.

9. She would draw support from a circular issued by the State Government particularly by the Commissioner of State Excise on August 26, 2015 so as to show that the respondents in exercise of powers under the Maharashtra Prohibition Act so as to control and regulate the movement of ethanol in various forms in the State of Maharashtra, have taken lawful steps.

10. Considered rival submissions.

11. In spite of the fact that two Division Bench judgments of this Court in the matter of *K.Raj & Co. and M/s.Arss Biofuel Pvt. Ltd. V/s. State of Maharashtra* and others in Writ Petition No.8548 of 2004 are subjudiced before the Apex Court, the Division Bench of this Court, is exercising powers for interim arrangement to be made during the pendency of similar proceedings like the one under consideration. Some of such orders which are passed concerning similar provisions and situation under the Bombay Denature Spirit Rules are also placed on record.

12. This Court having been made alive to the fact of the issue *qua*, whether it is within the ambit of the State Government to legislate, and regulate in regard to denatured spirit, is not required to adjudicate the rights of the parties finally at this stage. This Court is dealing with the issue only with regard to whether the respondent in the light of above referred two Division Bench Judgment are entitled to continue with custody of ethanol.

13. The fact remains that almost for last two years, the

respondents are custodian of the property in question. The fact remains that position of law being enumerated in the aforesaid two Division Bench judgments, it will be better if equities could be worked out in at this stage subject to the outcome of the of the S.L.Ps before the Apex Court.

14. In the wake of above, it would be appropriate, in my opinion, to allow the present application in terms of prayer clauses (a), (b) and (c) subject to following conditions:-

- (i) The petitioner shall, before taking custody of the property, shall file an affidavit with an advance copy to Commissioner of State Exercise disclosing to this Court the manner and the mode in which he intend to deal with the seized property.
- (ii) He shall also execute a bond for an amount, as shall be communicated by the respondents authorities after verifying the market rate of the products as is existing on the date of passing of this order to make good loss to the State exchequer, in case if he is convicted.
- (iii) He shall also furnish an undertaking that in case he is convicted for the offence, he shall deposit the amount with

the State Excise Department within a period of three months from the date of such conviction.

- (iv) The application stands allowed in above terms.

*(NITIN W.SAMBRE, J.)*