IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8468 of 2008
and
M.P.No.1 of 2008

M/s.Dharani Sugars and Chemicals,
Rep.by its Legal Officer,
B.Nagarajan,
Vasudevanallur,
Tirunelveli District. ... Petitioner

Versus

1.The State of Tamil Nadu,
Rep.by its Secretary,
Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Prohibition & Excise Department,
Chepauk,
Chennai - 600 009.

3.The Distillery Officer,
M/s.Dharani Sugars & Chemicals Ltd.,
Vasudevanallur,
Tirunelveli District. ... Respondents

This Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari, calling for records of the 2nd respondent culminated in and by his proceedings in Na.Ka.No.P (&) E 3(1)/574/2001 dated 18.11.2004 as confirmed by the 1st respondent in G.O.Ms.No.12, Home, Prohibition and Excise(II) Department, dated 17.03.2008 and quash the same.

For Petitioner	:	Mr.ARL.Sundaresan, Senior Counsel for Ms. P.T.Ramadevi,
For R1 & R2	:	Mrs.Thanga Vadhana Balakrishnan Additional Government Pleader
For R3	:	Notice served

O R D E R

The petitioner has challenged the order passed by the Commissioner of Prohibition & Excise Department in his proceedings Na.Ka.No.P & E 3(1)/574/2001 dated 18.11.2004, which was confirmed by the 1st respondent in G.O.Ms.No.12, Home, Prohibition and Excise(II) Department, dated 17.03.2008.

2. The case of the petitioner is that the petitioner company has been running a Sugar Mill and Distillery unit at Vasudevanallur in Tirunelveli Distirct. The said mill has been started with efforts of the Non Residential Indians with the object of investing in the State of Tamil Nadu to provide employment and to develop the industries for the rural people. The third respondent is the Distillery Officer in the cadre of Deputy Collector. The Distillery Officer is the authority having total control of the distillery unit. The third respondent is also custodian of the stock and D8 stock register in which entires are made in the morning and at the time of closing which would reveal the actual stock available. The third respondent would first carry forward stock available in the previous evening in the register. Thereafter, the third respondent after proper verification would enter the stock and in the evening would enter the existing stock. It is the main duty of the third respondent to send a periodical monthly report in Form Nos.I and II, duly signed by the third respondent and counter signed by the Officials of the petitioner herein.

3. While so, the petitioner further contended that, due to the strained relationship between the Distillery Officer, a show cause notice was issued by the second respondent framing 4 charges. The said charges are pertaining to the deficiency in stock, storage of empty denatured barrels and failure to provide additional lighting facilities. After receiving the said show cause notice dated 27.02.2001 a detailed reply was given by the petitioner. But without considering the same it was held by the second respondent that the charge Nos.2 to 4 were proved and exonerated the petitioner from the first charge. Hence, the petitioner, assailing the order of the second respondent, filed an Appeal before the first respondent and the first respondent also without considering the materials placed before him and the written arguments raised, mechanically rejected the explanation and confirmed the order passed by the second respondent by confiscating security deposit of Rs.1,00,000/-. Aggrieved against the said order, the petitioner has filed this writ petition.

4. In the counter filed by the respondents, it is stated that the Distillery Officer sent a report to the Commissioner of Prohibition and Excise, stating that there are discrepancies noticed in the stock of spirit on hand and stock of spirit on accounts. Since the petitioner did not take any steps to rectify the defects, they have breached the Distillery orders. Hence, the show cause notice was sent on 27.02.2001. On 05.04.2001, a reply was sent by the petitioner. Not satisfied with the reply, the second respondent passed the order dated 18.11.2004, forfeiting a sum of Rs.1,00,000/- remitted by the petitioner towards security deposit to the Government Account, for the lapses proved against them. On appeal, the Government, after considering the grounds raised in the appeal by the petitioner, has passed an order on 17.03.2008 rejecting the appeal and confirming the orders of the second respondent. The first respondent, in the appeal concluded that even after specific instruction given by the Distillery Officer, the petitioner has not taken any steps for removal of the empty barrels from the premises of the Spirit Ware House and failed to make adequate lighting arrangements in the premises for proper supervision of the Distillery Officer. Thus, the first respondent concluded that all the charges were framed after taking into account the real position prevailed in the Distillery at the relevant point of time and the amount of forfeiture ordered by the Second respondent cannot be said to be excessive for the proven charges. Thus, according to the learned Government Advocate, the first respondent has considered the grounds raised by the petitioner at length and arrived at a just and proper conclusion and hence, he prayed for dismissal of the writ petition.

5. Heard the learned senior counsel appearing on behalf of the petitioner and the learned Government Advocate appearing for the respondents. Perused the materials available on record.

6. From the impugned order, it could be seen that the second respondent has ordered forfeiture of the security to a sum of Rs.1,00,000/-, which was remitted by the petitioner, for certain lapses in the functioning of Distillery and for improper maintenance of certain accounts.

7. The first charge is that there are differences in the production details furnished by the Distillery Officer on 09.01.2001 and that of the report sent by the Distiller through e-mail. This was denied by the petitioner by stating that there is no difference at all and what was sent is on the basis of the details recorded in the stock register. This was accepted by the second respondent and the petitioner

was exonerated from the said charge on the ground that there is a mistake committed in the office of the second respondent in reconciling the actual stock.

8. The second charge relates to the variation in the quantum of distilled spirit indicated in the register and the barrel as on 09.01.2011. To the said charge, the petitioner submitted that D8 Stock Register has been maintained only by the Distillery Officer alone and a perusal of the D8 Register for 09.01.2001 and 10.01.2001 clearly shows that the Distillery Officer has not deducted the shortage stock on 10.01.2001 as found by him on 09.01.2001. It is also stated by the petitioner that the Dip Register maintained by the Distillery Officer did not show the shortage of stock and it is also to be noted that as done earlier, the Distillery Officer has not verified the stock in the presence of the officials/employees of the Distillers or its representatives. It is also stated that the register of the petitioner and the Distillery Officer would clearly prove that for the relevant period, there was no shortage or excess as alleged in Charge No.2.

9. It was contended in the impugned order that the stock of spirit was taken by Dip Measurement method by Distillery Officer and his staff along with the Chemist of the Distiller thrice a day. When the difference is noticed, the Chemist could not give any reason for this. On the contrary, the Chemist agreed with the variation noticed in the stock position, hence, entries regarding the variation in stock were made in the register.

10. The petitioner, in the explanation to show cause notice, stated that the subsequent explanation of the Chemist with the assistance of Deputy Manager (Administration) to show that there was shortage of stock of spirit cannot be accepted as it was not true.

11. It could be seen from the Show Cause Notice that there was shortage/excess of stocks in bulk litres, which are as follows:-

Sl. No.	Spirit	As per Account (in litre)	Stock on hand (in litre)	Variation (in litre)
1	Rectified Spirit RSSV 3A	74,137	73,680	457 (shortage)
2	RSSV 3B	7,851	7,951	100 (Excess)
3	Neutral spirit	1,62,809	1,63,589	780 (Excess)

Sl. No.	Spirit	As per Account (in litre)	Stock on hand (in litre)	Variation (in litre)
4	Impure spirit	7,176	7,646	470 (Excess)

12. According to Condition 6 of the licence in Form II of the Tamil Nadu Distillery Rules, 1981, breach of any of the condition of the licence or rules or orders relating to the Distilleries either by the licensee or by any person in his employment in the course of his employment shall entail forfeiture of the deposit and cancellation or suspension of the licence. The said power of ordering forfeiture of security deposit for the breach of any of the condition of the licence or rules or orders relating to the Distilleries has not been mentioned in the show cause notice.

13. Even if there is alleged stock difference, it is only for a minimum extent and due to various conditions, viz., the spirit being a rectified spirit, there is a chance of evaporation and also due to dip measurement, there is a possibility of variation in reading when measured by various persons etc.,. If there was shortage/excess, the Distillery Officer has to inform the Distiller about the discrepancies in the stock. But there is no complaint by the Distillery Officer immediately to the Distiller regarding the shortage/excess and only after 1½ months, a notice has been sent regarding shortage/excess of stock. If really, there are discrepancies in the stocks, then that should be given effect to in the D8 Register. As the difference alleged to have been noted by the Distillery Officer was not given effect in the D8 Register, this Court is of the view that there is no excess or shortage exceeding the permissible limit was found. If there is any difference, then it would be reflected continuously in the subsequent days also and for one day, it cannot be found. Since no such observation in the subsequent days as per the Register maintained by the Distillery Officer, it could be inferred that there is no such stock difference found as claimed by the department.

14. The third charge relates to non-removal of empty barrels, which were kept in the area where stocks have been kept, which according to the second respondent, is the reason for the mistake in arriving at the stock position. To the said charge, the petitioner has submitted that the denaturants like Benzeen and Tolune are highly poisonous and for that reason alone, they have been kept separately under the custody of the Distillery Officer, without hindrance to the day-to-day affairs of the company and subsequently, as

per the instructions of the Distillery Officer, the empty barrels have been removed on 08.01.2001 and they have been returned to the consumer M/s.Chemplast. The said fact can be proved with the Gate Passissued by the petitioner as well as the records of the M/s.Chemplast.

15. In the show cause notice, it is stated that 114 empty barrels having capacity of 100 litres have been kept in the place meant for the spirit barrels without any necessity is not correct, since the same were brought by the consumer M/s.Chemplast for preparation of denaturants like Benzeen and Tolune and once it was pointed out by the Distillery Officer, the same were returned to the consumer M/s.Chemplast itself.

16. The fourth charge relates to poor lighting facility in the unit. For the said charge, it was stated by the petitioner that lighting arrangements were provided and it was also informed to the Distillery Officer on 18.01.2001 and besides that, additional lighting has been provided by the petitioner. The allegation is that only after the Distillery Officer has taken photographs of the real state of affairs of the company, the Distiller had made lighting arrangements. The said allegation is without any proof.

17. But the first respondent, without considering the above facts, confirmed the order of forfeiture of Rs.1,00,000/- which is disproportionate to the charges especially when the charges 1 & 2 have not been proved beyond doubt and the charges 3 and 4 are for minor lapses. Since the charges were very frivolous in nature, it is only with regard to administrative functioning of the said company and when there is an Appeal remedy available to the petitioner, he has filed an appeal and the Commissioner, Prohibition and Excise, in the appeal, has ordered to pay a sum of Rs.1,00,000/- within one week from the date of receipt of the copy of the order impugned is incorrect and improper. The finding of the first respondent that the charges were framed after taking into account of the real position cannot be accepted and the respondents have not proved that there is variation in stocks beyond permissible limit. The security amount need not be forfeited for the minor lapses in the functioning of the Distiller. However, considering the minor lapses on the part of the Distiller, this Court imposes a fine of Rs.10,000/- to be paid by the petitioner payable to the second respondent/The Commissioner, Prohibition & Excise Department, Chepauk, Chennai - 9, within a period of four weeks from the date of receipt of this order.

18. With the above modification, the impugned orders are set aside and the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

klt/mra
To

1.The Secretary,
State of Tamil Nadu,
Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Prohibition & Excise Department,
Chepauk,
Chennai - 600 009.

+ 1 cc to Government Pleader SR.44567 &41355

W.P.No.8468 of 2008
and
M.P.No.1 of 2008

(CS-DR)
EU(24/09/2018)