THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition Nos.40645 & 42044 of 2017

COMMON ORDER:

In WP.No.40645 of 2017 the challenge is to the order, dated 13.10.2017 in Cr.No.2633/2017/CPE/TS/D1 of the Commissioner of Prohibition & Excise, State of Telangana, whereby the said Commissioner dismissed the appeal of the writ petitioner against the orders, dated 19.06.2017, in Cr.No.B5/583/2016, passed by the Deputy Commissioner of Prohibition & Excise, Mahabubnagar.

1.1 In the second writ petition (WP.No.42044 of 2017), the challenge is to the consequential proceedings, dated 26.10.2017, in Cr.No.B5/583/2016, whereby the Deputy Commissioner, Prohibition & Excise, Mahabubnagar, [hereinafter 'Deputy Commissioner'] authorised the District Prohibition & Excise Officer, Nagarkurnool, to conduct auction of the confiscated vehicle as per procedure after ensuring that there is no Court case or appeal pending in the matter and remit the auction amount of the vehicle after obtaining confirmation from the Deputy Commissioner.

2. I have heard the submissions of Sri S. Vijaya Prashanth, learned counsel appearing for the petitioner, and of the learned Government Pleader for Prohibition & Excise appearing for the respondents. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, are as follows: 'On 01.10.2016, a case of illegal transportation of 400 Kgs of Black Jaggery and 50 Kgs of Alum in the subject vehicle viz., Innova bearing

registration No.TS-12-EB-2377, without valid documents was detected and hence, a case in COR.No.208/2016, dated 01.10.2016, was registered for the offence punishable under Section 34(e) of A.P. Excise Act, 1968 [Adaptation of Telangana Order, 2015] by the Station House Officer, P & E Station, Atchampet. The Deputy Commissioner has confiscated the vehicle along with the said contraband. This Court by orders, dated 17.12.2016, in WPMP.No.52090 of 2016 in W.P.No.42257 of 2016 released the vehicle to the owner, that is, the writ petitioner, on furnishing of FDR for Rs.2,00,000/- and immovable property security for the balance amount of Rs.7,00,000/-. The writ petitioner's appeal to set aside the confiscation orders passed by the Deputy Commissioner was dismissed by the Commissioner on the grounds that the Jaggery and Alum are raw materials for illicit distilled liquor and as the same are being illegally transported without valid documents and the appellant failed to prove his innocence. Aggrieved thereof, the first writ petition was filed. Since the Deputy Commissioner issued consequential directions to the Officer concerned of Nagarkurnool, for auction of the confiscated vehicle, the second writ petition is filed.'

4. In this backdrop, the case of the petitioner and the submissions of his learned counsel are as follows: - 'The driver took the vehicle of the petitioner on emergency work by stating that his grand mother was in serious condition at Atchampet. However, the petitioner later came to know that the vehicle was seized by the excise department while carrying Black Jaggery. He is not aware of the vehicle carrying the seized and confiscated items. The crime is registered in a mechanical manner. No licence is required for doing business in purchase and sale of Jaggery. As per Government Memos, Black Jaggery,

rotten Jaggery and any other forms of Jaggery shall be viewed as agricultural produce or its bio-products and Black Jaggery is not an excisable article and even if Black Jaggery and Alum are together found in a vehicle, neither the said articles nor the vehicle shall be seized and confiscated in view of the Government Orders & Memos and also the settled legal position. This Court consistently held that being in possession of Black Jaggery even with an intention to manufacture illicit liquor, can, by no stretch of imagination, be said to be an offence, because as per the Excise Act, an offence under Section 34(e) can be stated to have been committed when a person is using the material for the purpose of manufacturing the intoxicant. Therefore, the confiscation orders by the Deputy Commissioner and the orders of the Commissioner impugned in the first writ petition as well as the consequential orders of the Deputy Commissioner for auctioning the vehicle are illegal and are liable to be set aside.'

4.1 In support of the said contentions, reliance is placed on the following decision of this Court in Chindura Muthaiah & Co., Kamareddy, Nizamabad District v. Deputy Commissioner of Prohibition & Excise, Karimnagar [2006(2) ALD 367].

5. Learned Government Pleader while supporting the orders impugned contended as follows: 'The petitioner's vehicle was intercepted. On checking, it was detected that Black Jaggery of huge quantity along with Alum, which are the raw materials for manufacture of illicit liquor, were being transported without valid permit. Hence, the vehicle was seized and later confiscated by an order of the Deputy Commissioner. The appeal of the writ petitioner was dismissed by the Commissioner by a reasoned order. Therefore, the said order

of the Commissioner and the subsequent order of the Deputy Commissioner directing the officer concerned to auction the vehicle and remit the amount to the exchequer are valid and sustainable under facts and in law.'

6. Now the question is as to whether Black Jaggery is an excisable article. The next question is – 'When Black Jaggery and Alum are being transported in a vehicle, whether the vehicle can be confiscated for the said reason.'

7. It is necessary to now refer to the following relevant provisions of the A.P. Excise Act, 1968, and the legal position obtaining.

> **2(9) "Excisable article" means any alcoholic liquor for human consumption; or any intoxicating drug.**
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> **2(20) "Intoxicating drug" means**
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> **(a) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant including all forms known as bhang, siddi, or ganja;**
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> **(b) charas, that is the resin obtained from the Indian hemp plant which has not been subjected to any manipulations other than those necessary for packing and transport;**
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> **(c) any mixture with or without neutral materials of any of the above forms of intoxicating drug or any drink prepared therefrom; and**
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> **(d) any other intoxicating or narcotic substance which the Government may, by notification, declared to be an intoxicating drug, such substance not being opium, cocoa leaf or manufactured drug as defined in Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985."**
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> **2(22) "Manufacture" includes every process whether natural or artificial by which any fermented, spirituous or intoxicating liquor or intoxicating drug is produced, prepared or blended and also re-distillation and every process for the rectification of liquor.**
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> **2(22-A) "Material" includes molasses, wash and such other substances as the State Government may, by notification, specify:**
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> **(22-B) "Molasses" means the heavy dark coloured residual syrup drained away in the final stage of the manufacture of jaggery or sugar or Khandasari sugar cane or gur containing solution or suspension, sugars**

> **which can be fermented and includes any product formed by the addition to such syrup of any ingredient which does not substantially alter the character of such syrup but does not include any article which the State Government may, by notification, declare to be molasses, for the purpose of this Act.**

8. Be it also noted that the learned Government Pleader placed reliance on a decision in **Commissioner, P & E, A.P. v. Sharana Goud** [(2007)6 SCC 42] wherein the contention of the owner of the vehicle carrying contraband liquor that he has neither knowledge of or has given consent for the alleged transportation of the contraband liquor in the vehicle by his friend, was not accepted by the Supreme Court holding *inter alia* that there was no prohibition for confiscation of the vehicle even if the owner of the vehicle in question has no knowledge of the offence under the provisions of the A.P. Excise Act. He further placed reliance on a decision of this Court in **Shri Ram Transport Finance Company Limited, Nellore v. Commissioner Prohibition and Excise, Hyderabad and others** [2009 (3) ALD 90]. In this cited decision, the facts disclose that the lorry covered by an agreement of hire was intercepted and was seized while transporting 360 full bottles of Indian made Liquor and proceedings under section 13 (2) of the Prohibition and Excise Act were initiated. At this stage itself it is apt to note that in the above cited two decisions, the contraband, which is liquor, is an excisable article unlike in the case on hand.

9. In our States, Black Jaggery or Rotten Jaggery or any other form of jaggery is viewed as agricultural produce or its bi-products and the same do not come within the purview of the list of 'materials' used in the manufacture of ID liquor. The above view of this Court finds support from the above referred

definitions. As per Section 2(9), Black Jaggery is not an excisable article. It is also not one of the materials in the list of materials as per Section 2(22-A). In fact, Memo No.47802/Ex.III.1/2006-13, dated 20.12.2010, reflects that the Commissioner of Prohibition & Excise, A.P., Hyderabad, sent a proposal for inclusion of Rotten Jaggery under the definition of material in A.P. Excise Act, 1968, so as to ensure effective control of ID arrack and to improve Government Revenue. However, the Government, after careful examination of the matter decided that Black Jaggery or Rotten Jaggery or any other form of jaggery shall be viewed as an agricultural produce or its bi-product and therefore, inclusion of the said materials in the list of 'material' used in the manufacture of ID liquor would adversely affect the interests of genuine ryots and the traders, and accordingly decided not to impose restrictions on any agricultural produce, particularly, on Jaggery, Black Jaggery or Rotten Jaggery and eventually, the Government has rejected the proposal to include rotten Jaggery under the definition of 'material' under Section 2 of A.P. Excise Act, 1968. Thus, Black Jaggery, which is the subject property herein, is neither an 'excisable article' nor a 'material' under the provisions of the Excise Act; and, in the considered view of the Government also it is an agricultural produce or a bi-product of an agricultural produce.

In **Ulli Bhaskar v. State of AP**[1], a learned Judge of this Court while dealing with the issue as to whether selling Black Jaggery is an offence even if the seller has knowledge that the purchaser is likely to use the Black Jaggery for manufacture of arrack, held that neither alum nor Black Jaggery are intoxicants either separately or when they are mixed and that they, at best, are raw materials and that possession of either Black Jaggery or alum *per se* is not an offence

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[1] 2004 (1) ALD (Crl.) 561 (AP)

under the provisions of the Excise Act. In the above cited decision, the allegation was that the petitioner therein was in possession of Black Jaggery and that he confessed in the interrogation that he sold the same for the purpose of illicit distillation of liquor. However, in the said decision, this Court considered in detail the scope and object of Section 34(e) of the A.P. Excise Act and held that being in possession of Black Jaggery and Alum, even with an intention to manufacture illicit liquor, can, by no stretch of imagination, be said to be an offence, because as per the said provision of law, an offence is committed by a person when he is using the material for the purpose of manufacturing the intoxicant. It is profitable to refer to, infra, the relevant findings in the said judgment of this Court:

> **Therefore, being in possession of black jaggery and alum, even with an intention to manufacture illicit liquor, can, by no stretch of imagination, be said to be an offence, because as per the Excise Act an offence under Section 34(e) is committed by a person when he is using the material "for purpose of manufacturing" an intoxicant. So, overt act of making preparation for manufacture of an intoxicant (i.e. arrack) with the material is the sine quo non for the act to constitute an offence under Section 34 (e) of the Excise Act. In view thereof sale of black jaggery and alum either together or separately, with or without knowledge that the person to whom they are being sold, is likely to use them for the purpose of manufacturing illicit arrack, is not an offence under Section 34 (e) of the Excise Act, because neither black jaggery nor alum, when sold jointly or separately, are intoxicants as defined in the Excise Act. The purpose for which he is purchasing the goods from a vendor need not be disclosed by the purchaser to the vendor, and even if the purchaser discloses that he has an intention to manufacture arrack from the goods purchased by him, the vendor cannot be said to have committed an offence under Section 34(e) of Excise Act, because as stated above, neither alum nor black jaggery are intoxicants either by separately or when they are mixed. They at best are raw materials from which arrack can be prepared. When sale of black jaggery and/or alum, for whatever purpose is not made an offence by the Excise Act or Prohibition Act, the vendor of black jaggery and/or alum would not be committing an offence under Section 34(e) of Excise Act, when he sells them to a person even with a specific knowledge that the vendee is likely to manufacture illicit arrack by making use of those articles.**

In **Chindura Muthaiah & Co., Kamareddy, Nizamabad District, A.P v. Deputy Commissioner of Prohibition and Excise, Karimnagar, A.P.**[2]**,** a learned Single Judge of this Court observed that it is no longer *res integra* that the Black Jaggery as such does not come within the purview of A.P. Excise Act, 1968 and that a Full Bench of this Court in **Ganesh Traders v. District Collector, Karimnagar** [2002 (1) ALD 210 FB] having considered the said issue, in detail, held that Black Jaggery cannot be treated as intoxicant and that having regard to the above legal position, the Commissioner issued a Circular, dated 03.11.2002. The learned Judge further held that confiscation under Section 46-A can be ordered only where an offence has been committed, which is punishable under the Act; and, followed the above said earlier view of this Court. Eventually, this Court held as follows: 'Since admittedly, the petitioners were only transporting Black-Jaggery, but did not indulge in manufacture of an intoxicant, it cannot be presumed that the petitioners had indulged in manufacture of an intoxicant within the meaning of Section 34(e) of the Excise Act.' Thus, this Court is consistently holding that Black-jaggery is not an 'excisable article' or a 'material' in the list of materials, as defined under Section 2(22A) of the Act and that possession of Black Jaggery or transportation of Black Jaggery *per se* is not an offence.

10. In the case on hand, Black Jaggery and Alum were seized when they are being transported in the vehicle of the petitioner and the vehicle of the petitioner was confiscated and the orders of confiscation of the Deputy Commissioner are confirmed by the Commissioner while dismissing the appeal of the writ petitioner, by not accepting his contentions that the vehicle cannot

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[2] 2006 (2) ALD 367

be confiscated. In the light of the undisputed factual matrix and the above legal position obtaining, this Court is of the considered view that the impugned orders of confiscation and the consequential orders are not in accordance with law. Viewed thus, this Court finds that, in the facts and circumstances of the case, the vehicle of the petitioner is not liable for confiscation and, therefore, the order of the Commissioner impugned in the first writ petition confirming the order of the Deputy Commissioner and the consequential order of the Deputy Commissioner impugned in the second writ petition are liable to be set aside.

11. Accordingly, both the Writ Petitions are allowed. As it is undisputed that the confiscated vehicle was given interim custody as per interim order on furnishing of a fixed deposit for Rs.2,00,000/- and immovable property security for the balance amount of Rs.7,00,000/-, there shall be a direction to the respondents to return the said receipt of the petitioner or the amount covered thereof, in case it is encashed, and also release the immovable property from security in view of the orders in these writ petitions. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

M. SEETHARAMA MURTI, J

18.01.2018
Note: Issue CC by 22.01.2018
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