

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.734 of 2019**

Sanjeev Gupta S/o Balveer Prasad Gupta Aged About 34 Years Director,
M/s Freightco India Ltd., Office-204 Residency 35/17, Log Ford Road,
Bangalore Karnataka Through Power Of Attorney Holder, Suresh Kumar
Singh, Director of M/s Freightco, S/o Swaroop Singh, Aged About 34 Years,
R/o 3rd Floor Flat No. 12, 2/11 Matri Mandir Lane Near Shishu Sathi Club,
Barnagar, Alam Bazar, North 24 Parganas, Kolkata, West Bengal

---- Petitioner

Versus

State of Chhattisgarh, through Assistant Commissioner, Excise Raigarh,
District Raigarh, Chhattisgarh

---Respondent

For Petitioner	:	Mrs.Aditi Singhvi, Advocate
For State/Respondent	:	Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02/04/2019

1. The petitioner's truck carrying 9360 bulk liters of Budweiser Beer was seized by the respondent/State on 15.10.2018, against which, he made an application under Section 451 of the CrPC read with Section 47-A (2) of the Chhattisgarh Excise Act, 1915 (hereinafter called as "the Act of 1915") before the Collector, Raigarh, which was rejected by the impugned order, against which, this petition under Section 482 of the CrPC has been filed.
2. Mrs.Aditi Singhvi, learned counsel for the petitioner, would submit that the Collector is absolutely unjustified in rejecting the application as the order runs contrary to the decision rendered by the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of**

Gujarat¹.

3. Mr.Ravi Kumar Bhagat, learned counsel for the respondent/State, would oppose the submission and support the impugned order.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the record with utmost circumspection.
5. It is not in dispute that on 15.10.2018 truck owned by the petitioner was carrying 9360 bulk liters of Budweiser Beer, he had a valid export permit to export beer from consignor at Malleshpally, Telangana and import permit from the Government of West Bengal to deliver the goods to the consignee at Siliguri. According to the State, no route has been indicated in the permit to be taken through the State of Chhattisgarh and therefore, it was seized and proceeding for confiscation is pending consideration.
6. Section 47-A(2) of the Act of 1915 states as under:-

“47-A. Confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance etc.,-

(1) xxx xxx xxx

(2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds fifty bulk literes he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, articles, implements, utensils, materials, conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody, disposal etc. of the

1 (2002) 10 SCC 283

confiscated intoxicants, articles, implements, utensils, materials, conveyance, etc. as may appear to him to be necessary in the circumstances of the case.”

Section 47-A(2) of the Act of 1915 empowers the Collector during the pendency of the proceedings to pass an order of interim nature for the custody, disposal etc. of the confiscated goods.

7. The Supreme Court in **Sunderbhai Ambalal Desai** (supra) has held that the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes:- (i) Owner of the article would not suffer because of its remaining unused, (ii) Court or the police would not be required to keep the article in safe custody, (iii) If the proper panchnama before handing over article is prepared, that can be used in evidence instead of its production before the Court during the trial, if necessary, (iv) This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles. It has been further held that appropriate orders should be passed immediately because keeping it at police station for a long period would only result in decay of the article. The Court should ensure that the article will be produced if and when required by taking bond, guarantee or security.

8. Since confiscation proceeding is pending from 15.10.2018 before the Collector and is likely to take time and keeping in view the principle of law laid down by the Supreme Court in **Sunderbhai Ambalal Desai** (supra), it would be expedient to grant interim custody of the vehicle bearing registration No. NL 01 K 8759 to the petitioner till disposal of

the proceeding for confiscation subject to following conditions:-

(i) The petitioner shall execute a bond in a sum ₹ 20,00,000/- (twenty lakhs) with two solvent sureties to the satisfaction of the Collector, Raigarh.

(ii) The petitioner must satisfy the Collector, Raigarh that he is the registered owner of the offending vehicle.

(iii) The petitioner shall not transfer or dispose of the offending vehicle to any one else and shall not make any change in its body, colour or engine. It is needless to say that make, colour, chassis number, and engine number of the offending vehicle shall be furnished by the petitioner before the Collector with an undertaking that no damage shall be caused or no part of the vehicle be substituted.

(iv) The petitioner shall also file an undertaking before the Collector that the offending vehicle shall not be used for commission of offence; and before giving interim custody of the offending vehicle to the petitioner, three coloured photographs of cabinet size from different angles clearly indicating registration number and other particulars of the vehicle shall be kept on file. The expenses for the photographs shall be borne by the petitioner.

(v) The petitioner shall produce vehicle either before this Court or before the Collector or such authorities as it may be directed, on his own expenses.

9. Next submission of Mrs.Aditi Singhvi is that goods i.e. Budweiser Beer are going to expire by 6th April, 2019, therefore, the petitioner may be allowed to sale the same.

10. No doubt, if the permission of sale is allowed then it cannot be produced during the proceedings before the Collector, but since the beer being a perishable item, a balanced view is to be adopted. No one is going to benefit if the seized article is left to be destroyed on account of bare technicalities. It is a loss, not only to the petitioner but a complete waste of the beer which could fetch revenue as taxes etc. Therefore, it is directed that on the petitioner's furnishing a personal bond and two sureties for an amount equivalent to the cost of beer, which is stated at Bar to be of ₹ 30 lacs. However, the petitioner is permitted to sale the same and deposit the entire account before the Collector, Raigarh within 7 days and in turn, the Collector, Raigarh shall ensure that the sale amount shall be secured by way of fixed deposit in a nationalized bank for a period of two years. The petitioner shall furnish sureties in the terms and conditions made in this order and also shall comply with the direction regarding furnishing detailed account as well as investment of the proceeds of beer after its release and shall not dispute the identity of beer.

11. With the aforesaid observation/direction, the CrMP stands disposed of.

Certified copy today itself.

Sd/-

(Sanjay K. Agrawal)
JUDGE