IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.200 OF 2019

M/s. Potrivit Distilleries Pvt. Ltd.
Plot No.14, Corlim Industrial Estate,
Corlim, Tiswadi, Goa.
Represented by its
Executive Director,
Mr. S. K. B.Nair,
residing at Milroc,
Kadamba Plateau,
Bainguinim, Goa. ... Petitioner

V e r s u s

The Commissioner of Excise
Government of Goa,
Office of Commissioner of Excise,
Panaji-Goa. ... Respondent

Mr. J. Godinho, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for the Responden.

Coram :- C. V. BHADANG, J.
Date : 4th October, 2019

ORAL ORDER

1. The challenge in this petition is to the order dated 31.01.2019 passed by the learned Chief Secretary, as an appellate authority, Government of Goa in Appeal No.2/2018. By the impugned order, the Appellate Authority while dismissing the appeal filed by the petitioner, has confirmed the order dated 20.02.2018 passed by the respondent cancelling three Excise Licences issued in favour of the petitioner, under the provisions of The Goa Excise Duty Act, 1964 (Act, for short) and the Goa Excise Duty Rules 1964 framed thereunder, (The Rules for short).

2. The brief facts necessary for the disposal of the petition may be stated thus :

The petitioner is having the following licences in respect of Indian Made Foreign Liquor (IMFL):

(i) Manufactureof IMFL............ No.M/IMFL/123

(ii)Bottling of IMFL …............ No.B/IMFL/122

(iii) Bonded Warehouse...........PBW/IMFL/09-10/197

It is a matter of record that plot no.14, Corlim Industrial Estate, Corlim, where the petitioner is having the aforesaid Excise License, is owned by the Goa Industrial Development Corporation (GIDC) and it was leased out to M/s. Deal Auto Consultants, which is a partnership firm having its office at Temba Wady, Merces, Goa. It appears that there was a Tripartite Agreement of sub-lease executed between the GIDC, as the owner, M/s. Deal Auto consultants as lessees and the petitioner as a sub-lessee on 18.05.2009 and a portion of the plot as described in the Schedule annexed to the Tripartite

Agreement admeasuring 650 square metres along with the factory shed was sublet to the petitioner where the petitioner was conducting the business on the basis of the aforesaid three Excise Licenses, which were valid for a period of five years commencing from 21.04.2009. It further appears that the office of the Commissioner of Excise had carried out an inspection of the said premises on 10.06.2016 in which certain irregularities were allegedly noticed on the basis of which, a show cause notice dated 08.07.2016 was issued to the petitioner. The respondent after considering the reply filed by the petitioner to the said show cause notice, disposed off the same by his order dated 20.07.2017 directing the petitioner to deposit an amount of Rs.2,07,781/- along with a fine of Rs.10,000/- for breaking open the seal of the tank without authorisation under the provisions of Section 35 of the Act and another Rs.10,000/- for violation of the provisions of Rule 46 of the Rules. The petitioner was directed to deposit the aforesaid amount within seven days of the receipt of the order. It is a matter of record that the said amount was deposited by the petitioner on 24.11.2017 i.e. after a delay of 109 days.

3. Be that as it may, the respondent issued yet another show cause notice to the petitioner on 11.12.2017 after taking note of a letter dated 23.10.2017 from Mr. Sachin Pai, Partner of M/s. Deal Auto Consultants (original lessee) claiming that the Tripartite Agreement had expired on 17.05.2014 and was not renewed since then. As such, Mr. Pai had requested the authority to direct the unit to remove the machinery and the stock lying in the said premises.

4. The petitioner filed a reply to the show cause notice claiming that the delay of 109 days in making the payment was due to financial difficulties as the distillery was non-functional for more than a year and expressing willingness to pay interest for the delay. The petitioner also claimed that the objection of the lessee will be amicably settled and the Tripartite Agreement will be renewed. The petitioner also claimed that they intend to start the distillery again in the next financial year and the licence renewal and label registration along with other dues will be cleared before 31.03.2018.

5. It appears that a personal hearing was granted to the petitioner on 11.01.2018 when its Executive Director Mr. S. K. B. Nair and Director Mr. Ashok Kumar, remained present. The respondent after considering the reply and hearing the representatives of the petitioner, found that the petitioner has violated the provisions of Section 16 read with Rule 42 of the Rules. The respondent found that the petitioner did not pay the fine imposed within time and further that the Tripartite Agreement had expired on 17.05.2014 and the lessee has not given his no objection certification (NOC) for continuation of the unit. In that view of the matter, by an order dated 20.02.2018, the three licences as aforesaid came to be cancelled which order has been confirmed by the Appellate Authority.

6. I have heard Mr. Godinho, learned Counsel for the petitioner and Mr. Faldessai, learned Additional Government Advocate for the respondent no.1. The original lessee M/s. Deal Auto Consultant has filed MCA No.715 of 2019 seeking intervention. I have heard Mr. Karpe, the learned Counsel for the intervenor, in support of the request for intervention.

7. Mr. Godinho, the learned Counsel for the petitioner submitted that as per Rule 47 of the Rules, the authorities are required to take account of the final stocks at intervals not exceeding three months. The contention is that the inspection which was conducted on 10.06.2016, was way beyond the period of three months and, therefore, show cause notice dated 08.07.2016 and the consequent imposition of the duty and the fine itself is illegal. It is submitted that in any event, the petitioner has paid the amount of Rs.2,07,781/- on

24.11.2017 and, therefore, no action could have been taken on the basis of the same only because there was a delay in deposit of the said amount.

8. Insofar as the second ground on the basis of the communication dated 23.10.2017 from M/s. Deal Auto Consultants is concerned, it is submitted that the act or rules no where require a NOC from the owner and in the present case that of the original lessee M/s. Deal Auto Consultants for renewal of excise licence. On behalf of the petitioner, reliance is placed on the decision of the Karnataka High Court in the case of **B. C. Narasimha Murthy vs. The Commissioner of Excise, ILR 1998 KAR 2596** in order to submit that in similar situation, the Karnataka High Court has held that the NOC of the owner could not have been insisted upon. He, therefore, submits that the petition be allowed and the impugned order directing cancellation of the three licenses be set aside and the respondent be directed to grant renewal of the three licences.

9. Mr. Pravin Faldessai, the learned Additional Government for the respondent no.1, has pointed out that the earlier order dated 20.07.2017 directing recovery of Rs.1,87,781/- along with Rs.10,000/- each on account of breach to Section 35 of the Act and Rule 46 of the Rules, has not been challenged and therefore the contention raised in that regard cannot be entertained in this petition. The learned Additional Government Advocate, relied upon the decision of this Court in the case of **Mr. Rupesh Harmalkar vs. Excise Commissioner & Ors.** in **Writ Petition No.296/2014** decided on 04.09.2014 in order to submit that a person applying for licence either must be the owner of the premises or should have an NOC from the owner where he intends to conduct the business. The learned Additional Government Advocate pointed out that the Excise Licence is issued in relation to particular premises and, therefore, obtaining of the No Objection from the owner in a case where the licencee is not the owner of the premises, is inherent. He submits that the Tripartite Agreement having expired, the petitioner cannot insist for renewal of the licence for conducting the business at the said premises.

10. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out. The material facts are not disputed apart from being matters of record. It is a matter of record that there was an inspection conducted by an enforcement team headed by the Assistant Commissioner of Excise, on the

10.06.2016 in which there were certain irregularities noticed. The enforcement team had, inter alia, found that one tank containing 1000.000 BL of alcohol was illegally filled, was sealed which was opened by the proprietor without informing the excise inspector. There were other irregularities noticed in the order dated 20.07.2017 including breaking open of the seal of the tank without authorisation and in violation of the provision of Rule 46 of the Act. A fine of Rs.10,000/- was imposed on the said count. By the order dated 20.07.2017, the petitioner was directed to pay Rs.2,07,781/- within seven days. Indisputably, the order was not challenged. It is not possible now to accept the contention that the inspection was conducted beyond the period of three months. Even otherwise, the contention is unacceptable that on account of any such delay, the inspection and the action taken on the basis of the same can be faulted with. The petitioner has complied with the said order albeit with a delay of 109 days on 24.11.2017. Thus, the contention raised on the basis of Rule 47 of the Rules, to my mind, cannot be accepted. The delay in deposit of the aforesaid amount is one of the grounds on which cancellation/renewal of the license is based. Secondly, it is a matter of record that the petitioner is only a sub-lessee of the plot which belongs to GIDC of which M/s. Auto Deal Consultants is a lessee. The Tripartite Agreement has expired.

There is no renewal of the same. The petitioner has not obtained the NOC from the licensee M/s. Auto Deal Consultants.

11. In the case of **Rupesh Harmalkar** (supra), the petitioner had challenged an order passed by the Excise Commissioner which was confirmed in appeal. The plot where the unit was situated in that case, belonged to the parents of the petitioner. The respondent no.2, who was the father of the petitioner, had issued NOC dated 06.11.2002 and 29.11.2002 for grant of licence to the petitioner, which NOCs were subsequently withdrawn. A similar contention was raised on behalf of the petitioner that for renewal of license, NOC was not required. It was also contended that the petitioner had invested amount and having made construction on the plot, the licence/NOC had become irrevocable under Section 60 of the Indian Easements Act, 1882. This Court found that the renewal of the license is not automatic and the procedure applicable under Rule 90 of the Rules would also be applicable for renewal of licence. This Court also found that the licence is granted and renewed against particular premises, which should be named in the application and that “it goes without saying”, that a person applying for licence must be the owner of the premises or should have given NOC of the owner of the premises where he wants the licence.

12. In my considered view, the requirement of an NOC of the owner or a lessee in the present case (the petitioner being a sub-lessee), is basic and inherent in the grant or renewal of licence.

13. The decision in the case of **B.C. Narasimha Murthy** (supra), turned on its own facts. There the petitioner had challenged the order of renewal of the Excise Licence granted by the second respondent, in favour of the respondent nos.3 and 4. The Court found that though the requirement of consent of the landlord is not specifically there under the Act or Rules but for administrative convenience, it was obtained and once the consent is obtained, then it is not necessary that such consent has to be obtained for renewal of the licence every year. It is significant to note that the Court refused to issue an order directing renewal, in that case on the ground that the issue as to whether there is a valid lease of licence or tenancy in existence cannot be examined under Article 227 of the Constitution of India when the dispute between the parties was subject matter of a suit.

14. In the present case, apart from the fact that the Tripartite Agreement had expired, the cancellation is also on the ground of the earlier order dated 20.07.2017 which had attained finality for want of challenge and even compliance of the said order was delayed.

15. Considering the over all circumstance, I do not find that a case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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