IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7928 OF 2018

M/s. Nakshatra Distilleries and
Breweries Limited ... **Petitioner**
V/s.
State of Maharashtra & Ors. ... **Respondents**

Mr.C.M. Korde, Senior Advocate a/w. Mr.V.M. Thorat for Petitioner.
Mr.S.D. Rayrikar, AGP for Respondent Nos.1 to 3.
Mr.P.N. Patil a/w. Mr.Ajit Hon i/b. PNP and Associates for Respondent Nos.4 & 5.

CORAM : A.S. GADKARI, J.

DATE : 1st August 2019.

P.C. :

1] The petitioner has taken exception to the Order dated 18th April 2017 passed by the Hon'ble Minister, State Excise Department, Government of Maharashtra under the provisions of Maharashtra Prohibition Act 1949 and the Rules framed thereunder, *inter-alia,* cancelling the licence granted to the petitioner for manufacturing of Indian made foreign liquor (IMFL) permanently.

By the impugned Order, the concerned Authority has also directed the petitioner to deposit loss of revenue as calculated and mentioned in the operative part of the said Order with the Commissioner, Maharashtra State Excise Department.

2] Heard Mr.Korde, Senior Counsel along with by Mr.Thorat, learned Advocate for the petitioner, Mr.Rayrikar, learned AGP for respondent Nos.1 to 3 and Mr.Patil, learned Advocate for respondent Nos.4 and 5. Perused the record annexed to the petition.

3] The record indicates that the Excise Department of State noticed that, though the petitioner claimed that it exported 1,10,000 boxes of IMFL to M/s.Royal Bonded Warehouse Bordumsa, District Changlang, Arunachal Pradesh, infact the said goods did not reach its destination and were diverted to other places. That the Excise Verification Certificates produced by the petitioner were found to be bogus. Accordingly, the Excise Department of State of Maharashtra made communication with the Excise Department of State of Arunachal Pradesh for getting information in that behalf. In response to the letter issued by the Excise Department of the State of Maharashtra, the Commissioner, Excise and Taxes, Arunachal Pradesh by its letter dated 6th December 2016 provided certain information to the respondent No.3. It was signed by Mr.Pebom Bagra, Deputy Commissioner (Tax and

Excise), Itanagar, Arunachal Pradesh. It was also informed to the respondent No.3 that, the importer, namely, M/s.Royal Bonded Warehouse Bordumsa, District Changlang, Arunachal Pradesh did not issue Import Permits and the Excise Verification Certificates as per Rule 25(3) were not genuine documents. These are the material allegations against the petitioner. On the basis of the said allegations, a notice dated 25th January 2017 was issued to the petitioner, calling upon it for its say in the matter before initiating further action in that behalf. The petitioner by its reply dated 31st January 2017 denied the charges leveled against it. In the reply, the petitioner has raised a contention that the said letter dated 6th December 2016 issued by Commissioner (Tax and Excise), Government of Arunachal Pradesh was not given for its perusal and information and therefore, they were not in a position to respond to the same.

As noted earlier, by the impugned Order dated 18th April 2017, the respondent No.1 cancelled the licence granted for manufacturing of IMFL in favour of petitioner and has also directed to pay the loss of revenue as mentioned in the said Order.

4] Mr.Prasad Bhalchandra Sasturkar, Inspector State Excise, Flying Squad, Maharashtra State, Mumbai, has filed a detailed affidavit dated 6th January 2018 basically reiterating the facts mentioned in the show cause Notice and impugned Order. The said letter dated 6th December 2016 along with its annexures is annexed to the said affidavit in support of the contention of the respondent Nos.2 and 3.

5] By an Order dated 12th April 2019 passed in Civil Application No.990 of 2019 preferred by the petitioner herein, the petitioner was permitted to implead respondent Nos.4 and 5 in the present petition. After their impleadment, this Court issued notice to the said respondents. In response to the notice, the said respondents through their Advocate have caused appearance and have also filed their affidavit-in-reply dated 18th June 2019 and 22nd June 2019 respectively to the present petition.

In their affidavits, the said two respondents have stated that, on the basis of the information submitted by their subordinates, they forwarded the information on earlier occasion by the said covering letter dated 6th December 2016 to the respondent No.3 i.e. the Commissioner of State Excise, Maharashtra State. They have stated that, as a matter of fact the said Import Permits were issued by the said

M/s.Royal Bonded Warehouse, Bordumsa, Changlang (Arunachal Pradesh) and 74 Excise Verification Certificates were also issued by their department. It is stated in the affidavit of respondent No.4-Mr.Ando Pangkam, Deputy Commissioner (Legal), Tax and Excise Department, Government of Arunachal Pradesh that, the importer i.e. M/s.Royal Bonded Warehouse, Bordumsa, has not received 1500 boxes (cases) of IMFL against the Permit No. Ex-IP/RBWH/199/16-17.

As the respondent Nos.4 and 5 have now made a categorical statement that, the earlier information provided by them to their counterpart in the State of Maharashtra was erroneous and the correct information collected by the said two authorities from their department has now been placed on an Affidavit, it is necessary for the respondent No.1 i.e. the concerned Licencing Authority to re-consider the case of the petitioner as per the provisions of law. The respondent No.1 is at liberty to seek information about genuineness of the said two affidavits from the concern officers from the State of Arunachal Pradesh and after taking into consideration the facts mentioned in the said affidavit may pass appropriate orders as per the provisions of law.

6] In view of the above, the impugned Order dated 18th April

2017 passed by the Hon'ble Minister, State Excise Department, Government of Maharashtra is hereby set-aside and the case bearing No.FLR-0117/C.N.17/SED-2 is remanded to the Hon'ble Minister, State Excise Department, Government of Maharashtra, for its consideration afresh.

7] Learned AGP submitted that, the factory of the petitioner is already closed down in pursuance of impugned Order dated 18th April 2017. In view thereof, during the decision of the case of the petitioner, the petitioner shall not start the said factory.

The Hon'ble Minister, State Excise Department, Government of Maharashtra is hereby requested to expedite hearing of the petitioner's case and to make an endeavour to dispose off the said Case No. FLR.0117/CN17/SED-2 within a period of three months from today.

8] The parties herein are directed to appear before the concerned Authority i.e. the Hon'ble Minister, State Excise Department, Government of Maharashtra on 13th August 2019 at 3.00 pm.

9] Writ Petition is disposed off in above terms.

[A.S. GADKARI, J.]