**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1005 OF 2017**

Nipurna M. Rathod .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

…

Mr. Vikram Sutaria for the applicant.
Mr.Hiten Venegavkar for respondent no.1 UOI.
Mr.H.J. Dedhia, APP for respondent no.2.

**CORAM: BHARATI DANGRE, J.**

**DATED : 9th October 2019**

**<u>P.C</u>:-**

1 The applicant, a proprietor of Hotel Vishwanath situated in Silvassa, Dadra and Nagar Haveli, holds a valid excise licence. The premises of the applicant came to be inspected on 13th June 2016 and a notice came to be issued only on 15th July 2016 alleging certain discrepancies. On 23rd November 2016, the Deputy Commissioner (Excise) of the Dadra & Nagar Haveli, Silvassa recorded that the applicant has committed an offence punishable under sub-section (b) of Section 50 of the Dadra and Nagar Haveli Excise Regulation 2012. In exercise of the powers conferred under Section 66(1), the decision was taken to seize the quantity of the liquor stored

by the licensee in the unauthorized licence premise with an intention of its illegal use. The seized quantity of Indian liquor also came to be confiscated.

2 Against the said order, an Appeal was carried out to the Commissioner of Excise, Dadra and Nagar Haveli, Silvassa and by an order dated 28th July 2017, the Deputy Commissioner of Excise was directed to proceed for action against the licensee in terms of Section 36, 66, 67 and 68 of the Dadra and Nagar Excise Regulation within a period of 15 days. The appellate order records that a personal hearing was conducted on 14th July 2017 in the office of the Commissioner of Excise, which was attended by the licensee and the Deputy Commissioner of Excise and after following principles of natural justice, the impugned orders came to be passed.

3 Learned counsel for the applicant has invited my attention to an order dated 21st September 2017 passed by the Division Bench of this Court in First Appeal (St) No.23684 of 2017. The said First Appeal assail the order dated 21st January 2017 passed by the Dy.Commissioner (Excise) Dadra & Nagar Haveli, Silvassa and also the order passed in exercise of the appellate jurisdiction by the Commissioner dated 28th July 2017. The First Appeal came to be decided in the wake of a narrow controversy as to whether the appellate authority while exercising its power under clause (2) of Regulation 77 can

decide an Appeal without following the Regulation 79. Regulation 79 mandate that the order of the appellate authority disposing of an appeal shall be in writing, and should state forth the points for determination, the decision thereon and the reasons for the decision. The Division Bench of this Court was of the clear view that the order passed by the appellate authority on 28th July 2017 was not compliant of the Regulation 79 which made it imperative for the appellate authority to pass a reasoned order. Being satisfied that the said impugned order is not in spirit with the Regulation 79, this Court was pleased to quash and set aside the order dated 28th July 2017 and restore the appeal to the file of the Commissioner of Excise, Dadra and Nagar Haveli, Silvassa.

The appellant was directed to appear before the Commissioner of Excise on 6th October 2017 and liberty was granted to the Commissioner of Excise to decide the application for interim relief.

4 It is informed by the learned counsel for the applicant that the Appeal was subsequently decided by the Commissioner by passing a fresh order on 26th April 2019. Pertinent to note that the said Appeal is compliant with the Regulation 72 and by the said order, the Commissioner has directed the Deputy Commissioner (Excise) to dispose of the confiscated articles in accordance with Rule 119 of the Dadra and Nagar Excise Rules 2013.

5 In light of the said subsequent development, in form of an order dated 26th April 2019 passed by the Commissioner, the initiation of action under Section 36(1)(b), Section 50(b) of the Dadra and Nagar Haveli (Excise) Regulations based on the order passed by the Deputy Commissioner of Excise dated 27th January 2017 and the subsequent order passed by the Commissioner on 25th July 2017, do not survive.

6 Resultantly, the present Criminal Application deserves to be allowed and the order passed by the JMFC, Dadra & Nagar Haveli, on 31st August 2017 based on the two impugned orders which have been subsequently merged in the order dated 26th April 2019 on remand from this Court is liable to be quashed and set aside.

Criminal Application is allowed in terms of prayer clause (a).

**SMT. BHARATI DANGRE, J**

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