

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.25354 OF 2019

ORDER

On the ground that petitioners were illegally transporting 1800 Kgs. of Jaggery and 60 Kgs of alum in vehicle - Mahindra Beloro Maxi Truck bearing No.TS-11UB-6225, the said commodity along with vehicle was seized under panchanama, and case in crime No. PCR No.176/2019 dated 28.09.2019 was registered under Sections 34(e) of T. S. Excise Act, 1968 (for short 'the Act') read with Clause (3) and (4) of GUR (Regulation of Use) Order 1968, in Kalwakurthy Excise Station. For release of the seized property and the vehicle, petitioners filed petition under Section 34 and Section 46(2) of the Act. Vide proceedings in Cr.No.B1/391/2019 dated 01.11.2019, the 3rd respondent – Deputy Commissioner of Prohibition and Excise Mahabubnagar Division, based on chemical analysis, found that the seized contraband is jaggery, which is unfit for human consumption, but can be used as raw material in the manufacturing of I.D. liquor and accordingly dismissed the application. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioners submits that black jaggery and the alum are not prohibited articles within the meaning of Section 34 of the Act and transportation of the said commodities does not constitute offence punishable under the provisions of Act and the Regulations made thereunder. Learned counsel further submits that the 3rd respondent, without giving any opportunity of hearing, and without considering the material on record and on mere assumption that the seized jaggery and alum are likely to be used for preparation of I.D. liquor, dismissed their application. He submits that the said commodities are perishable and if the same are not released, petitioners will be put to huge loss. He submits that the vehicle which is kept with the 4th respondent, is lying idle and may get damaged. With these submissions, learned counsel sought to set aside the impugned proceedings, and for release of vehicle.

Learned Government Pleader for Excise submits that the 3rd respondent on chemical analysis report categorically recorded finding of fact that the seized contraband is jaggery and unfit for human consumption and that it can be used as raw material in the manufacturing of illicit distilled liquor. Such finding of fact cannot be interfered with by this court. He submits that against the impugned proceedings, petitioners have alternative remedy of appeal under Section 63(2) of the Act, and hence they may be relegated to avail the said remedy.

Since there is provision for appeal under Section 63(2) of the Act, this court is not inclined to interfere with the impugned proceedings, and the petitioner is given liberty to avail the said alternative remedy.

In far as interim custody of the vehicle is concerned, the said vehicle is stated to be lying with the 4th respondent – Excise Police Station, and if the same is kept idle there is every possibility of getting damaged, as it would be exposed to sun and air, and such seizure would not enure to the benefit of any one. Hence, the 3rd respondent is directed to release the vehicle referred to above, subject to petitioners furnishing bank guarantee to the value of the vehicle assessed by the Motor Vehicle Inspector concerned, and also subject to furnishing undertaking to produce the vehicle as and when required, and not to alienate the vehicle or alter its nature or create any encumbrance over it. The release will be subject to further enquiry under Section 63(2) of the Act.

Writ petition is accordingly disposed of.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:21—11—2019
AVS