

25-03-2021
Court No.2
Sh- 22

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

W.P.A. 658 OF 2021

M/s. Namtraw IMFL Bonded Warehouse.

Vs.

The State of West Bengal & Ors.

Mr. Hillol Saha Poddar,

Ms. Arpita Saha.

.. For the Petitioner

Mr. Subir Kumar Saha,

Mr. Bikramaditya Ghosh,

..For the State

Parties are represented through their learned advocates, the names of whom are shown above at the beginning of the order sheet.

The grievance of the writ petitioner is that the respondent authorities, namely respondent no.4, being the Additional District Magistrate and Collector of Excise, Jalpaiguri has mechanically rejected the prayer for return of seized non-duty paid foreign liquors to the writ petitioner, who is consignee to the relevant consignment.

Some of the facts may be mentioned over here for addressing the prayer for return of seized foreign liquors. The Excise authority on 11th December, 2020 intercepted the vehicle with two persons therein carrying then unauthorizedly 11592 Lts. NDP FL in connection with an illegal consignment. No valid documents could be produced by the persons sitting inside the vehicle, and as a result thereof the prosecution was started under Sections 46A (c), 46A (cc) & 52 of the West Bengal Excise Act 1909. The

investigating Officer took up investigation and reported the seizure of the vehicle to the District Collector for required confiscation. A prayer was made before the respondent no.4 seeking return of the seized 11592 Lts of non duty paid foreign liquor (NDP FL) by the writ petitioner describing him to be the consignee. By an order dated 22nd February, 2021 the prayer for return of the same was rejected.

Learned advocate, Mr. Hillol Saha Poddar, representing the petitioner submits that several representations were made before the appropriate authority, but the same has not been duly considered in its right perspective. According to the writ petitioner, the prayer for return of the seized 11592 Lts. of NDP FL is necessary as the same is perishable in nature.

Mr. Ghosh, learned advocate, representing the State respondent, in particular the respondent no.4, contends that the items sought to be returned were not perishable in nature, and more so in writ jurisdiction, the prayer for return of seized 11592 Lts of NDP FL cannot be given in view of the appellate provision contained in Section 3 of Bengal Excise Act, 1909. Thus according to Mr. Ghosh, without exhausting the appellate forum, the instant writ petition is not good enough for any consideration.

When there is sufficient appellate provision providing adequate remedy to the writ petitioner, the same may be resorted to. Though there may be delay in preferring the appeal, but if any application is filed along with the appeal for condonation, the same may be condoned by the respondent authorities bearing in

mind the onset of COVID-19, and its consequential impact at the moment.

With this direction and observation the instant writ petition is disposed of giving liberty to the petitioner to prefer appeal before the appellate authority for due redressal of the grievance.

There will be no order as to costs.

Since no affidavits have been called for the allegations contained in the writ petitions, shall be deemed not to have been admitted by the respondents.

Photostat Certified copy of this order, if applied for, be supplied to the learned advocates for the parties expeditiously on compliances of all requisite formalities.

(SUBHASIS DASGUPTA, J.)