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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISIDICTION

WRIT PETITION NO. 5697 OF 2021

Manjuben Mukesh Tandel .. Petitioner

Vs.

Commissioner of Excise
Department of Excise Daman .. Respondent

Ms. Deepali Kamble for petitioner.
Mr. Hiten Venegaonkar for respondents.

C0RAM: DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

DATE: SEPTEMBER 21, 2021

PC:

1. The excise license granted in favour of the petitioner was cancelled by the Collector-cum-Commissioner of Excise, Daman by an order dated May 19, 2020. Aggrieved thereby, the petitioner carried such order in an appeal before the Administrator, Dadra & Nagar Haveli and Daman & Diu at Daman. The Administrator by his order dated November 3, 2020 dismissed the appeal and thereby upheld the order of the Collector-cum-Commissioner of Excise under challenge.

2. The appellate order of the Administrator is under challenge in this writ petition basically on the ground that the order does not contain any reason in support of the conclusion

reached that the order of the Collector-cum-Commissioner of Excise did not merit any interference.

3. We have heard Ms. Kamble, learned advocate for the petitioner and Mr. Venegaonkar, learned advocate for the respondents.

4. The contention raised on behalf of the petitioner obviously has merit. The order of the Administrator is spread over 15 paragraphs. The first 13 paragraphs record the facts and the submissions advanced on behalf of the parties. Paragraph 14 of the order reads as follows: -

> "14. It is evident from the records and arguments of the parties that the Appellant had violated different provisions of the Goa, Daman & Diu Excise Duty Act and Rules 1864, viz. Rule- 104(1), 103, etc. I agree with the findings in the Order of the Collector-cum-Commissioner of Excise, Daman. I do not find any merit in this Appeal and the Order dated 19/05/2020 of the Collector-cum-Commissioner Excise, Daman cancelling the Excise License No.WS/IMFL/35 & No. WS/CL/36 having trade name of Infinity Traders, which is issued to Mrs.Manjulaben Mukesh Tandel is upheld and the Appeal No.06/2020 is hereby dismissed."

5. Bare reading of the aforesaid extract would reveal that absolutely no reason has been given by the Administrator in support of the conclusion reached by him. Such order is in the teeth of the decision of the Supreme Court reported in (2009)

4 SCC 240 **[Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya, Gramina Bank vs. Jagdish Sharan Varshney & Ors.]** wherein it has been held as follows: -

> "5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority."

6. The appellate order being indefensible is liable to be set aside only on the sole ground of the same being unreasoned. We, therefore, propose to order a remand. In course of hearing, we have been informed by Mr. Venegaonkar that the proceedings against the petitioner had been initiated under the Goa Excise Duty Act and Rules 1964; hence, an appeal would lie before the Advisor, being of the same rank of the Chief Secretary, and not before the Administrator, in terms of the provisions contained in Rule 40 of the relevant Rules.

7. Having perused Rule 40, we find that the Administrator had no jurisdiction to entertain the appeal and he ought to have placed the same before the Advisor for consideration. This is an additional ground for which we find the appellate order to be flawed.

8. For the reasons aforesaid, the appellate order dated November 3, 2020 stands set aside. The appeal shall now be placed before the Advisor in terms of Rule 40, who shall proceed to dispose of the same in accordance with law.

9. Needless to observe, the order of the Advisor must have the support of reasons.

10. Let the appeal be considered and disposed of as early as possible, but not later than four weeks from date of receipt of a copy of this order.

11. All contentions are left open.

PRAVIN DASHARATH PANDIT

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Date: 2021.09.22 19:21:11 +0530

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**