

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7921 OF 2018**

Vikramjeetsingh Dhall Proprietor of Dhall Foods and Beverages ...Petitioner
Versus
The Collector of Mumbai (City) & Ors ...Respondents

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1236 OF 2020**

Pratik Bhupendra Popat ...Petitioner
Versus
Maharashtra State Excise Department & Anr ...Respondents

Ms Veena Thadani, i/b Vishal Thadhani, for the Petitioner in WP/7921/2018.

Mr SS Panchpor, AGP, for the Respondent-State in WP/7921/2018.

Mr Vivek Kantawala, with Amey Patil & Shanay Bafna, i/b Vivek Kantawala & Co, for the Petitioner in WP/1236/2020.

Mr Abhay L Patki, Addl GP, for State in WP/1236/2020.

Mr Mahesh Tambe, Sub-Inspector, State Excise Department, Mumbai, is present.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.
DATED: 5th April 2022**

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1. There are two Writ Petitions before us. This common order will dispose of both for although they arise on different causes of action.
2. Writ Petition No. 7921 of 2008 is a Writ Petition by one Vikramjeetsingh Dhall, the sole proprietor of Dhall Foods and Beverages. He is a licensee in a form of FL-I in respect of foreign liquor trade. He also holds an import license to clear foreign liquor from Indian Customs.
3. Writ Petition No. 1236 of 2020 is filed by one Pratik Bhupendra Popat. He is the owner and the licensor to Dhall of commercial premises, office No. 13 on the ground floor in Nav Nelam Premises Cooperative Society Ltd at 118, Dr RG Thadani Marg, Worli, Mumbai 400 018 admeasuring 957 sq ft. Dhall took the Worli premises from Popat on leave and license. He used the commercial premises to store certain stocks of import duty paid foreign liquor.
4. Dhall placed an order with a sister concern Dhall Foods and Beverages Private Limited Delhi for a certain stock of import duty paid foreign liquor. Three consignments of 1110 bottles, 4692 bottles and 108 bottles of this description of foreign liquor were dispatched ex-New Delhi to Mumbai along with the relevant transport permits and documents. All consignments were delivered on 30th December 2017 to the transporter in New Delhi.

5. It seems that officers attached to the Maharashtra State Excise Department intercepted the truck carrying inter alia these goods. They registered a CR No. 01/18 saying that some of the stock of liquor or beer on board the truck was not in fact duty paid imported foreign liquor. In other words, along with Dhall's consignment there was some other stock that was not duty paid.

6. On 5th January 2018, some officers attached to the Flying Squad No. 2, Thane came to the licensed premises at Worli. They found some violations and breaches. According to Ms Thadani for Dhall, the Excise Authorities "sealed" the Worli premises. They also apparently sealed Dhall's Customs Bonded Warehouse. This was despite the specific provision of Section 147 of the Maharashtra Prohibition Act 1949, which does not permit the application of that Act to exports and imports across customs frontiers.

7. On 10th January 2018, the Collector of Mumbai City issued a show cause notice to Dhall. He replied on 8th February 2018. He repeatedly asked the authorities to remove the seals but to no avail. We are not concerned with the criminal proceedings in these Writ Petitions. The two premises at Worli and the Customs Bonded Warehouse remained under these so-called seals and are in that condition even today.

8. On 15th March 2018, there was a second show cause notice and suspension order. Dhall was called for a personal hearing. This is the reason why Dhall has filed the present Writ Petition No. 7921 of 2018.

9. Popat's case is even simpler. He states that under no circumstances could the licensed premises have been sealed to his disadvantage. If at all, Dhall's goods could have been removed and taken to another location. A default on Dhall's part, even assuming there was one, could not have consequences that were visited on Popat. He was never doing any business in foreign liquor. It was not he who stored any liquor in the Worli premises. There is no case whatsoever against Popat and yet his premises have been virtually kept out of his reach since 2018. Mr Kantawala on behalf of Popat questions the power of Excise Department to act in this manner at all.

10. Ms Thadani states that her client has lost all interest in the goods and the premises (both at Worli and at the Customs Bonded Warehouse). The liquor that is Worli premises and the Customs Bonded Warehouse is now not fit for consumption. All of it is either beer or wine, and all of it is beyond its shelf life. This is not the kind of wine that ages well. The whole stock has to be destroyed. She has no objection to Excise Authorities disposing of it.

11. Somewhat concerned by these volumes and how it was proposed to destroyed, we asked Mr Patki to obtain instructions. We are shown a notification dated 1st December 1953 which deals with the disposal of confiscated and forfeited articles. These are called Bombay Prohibition Confiscated or Forfeited Articles (Disposal) Regulations Act 1953. Part of the disposal process is by auction. We do not permit an auction because that is a danger to public health. The regulations only says that the foreign liquor is to be destroyed. This does not answer our question which is about the *manner* of that

destruction. On taking instructions from an officer who is present in Court, Mr Patki tells us that the foreign liquor will be emptied into nearest available nallah.

12. This startling statement does nothing whatever to assuage our concerns. We expect the Excise Department to act prudently, cautiously and in accordance with law. If this means that the Excise Department must get clearance from a Pollution Control Board then so be it. In its anxiety to destroy this liquor, the Excise Department must not endanger the larger public health.

13. Mr Patki is right in saying that the costs of transportation of the liquor from the Worli premises and the Customs Bonded Warehouse to the Excise Department go downs at Sewri are to be borne by Dhall. Ms Thadani readily accepts this. Before this is done the stock will have to be inventoried so that there is no misunderstanding at any stage. We proceed to set the schedule for this. The inventory at Worli is to be completed first. This is to be done on 11th April 2022 starting at 10:30 am that day. The inventory at the Customs Bonded Warehouse is to be completed on 13th April 2022, starting from 10:30 am that day. Parties may alter the time but only by mutual consent. If there is no consent, this schedule will govern.

14. For the purposes of the inventory, any seals placed by the Excise Department are to be removed. The Excise Department is not to seek further order or clarification.

15. If the seals are not removed from Worli premises, we grant liberty to Popat and Dhall to remove those seals and to put Dhall's and Popat's own seals until the stock is removed. This is only for safety. Popat's seal does not signify that he has any connection with any of the stock.

16. Dhall may remove the Excise seals from the Customs Bonded Warehouse if the Excise Authorities do not do so.

17. We expect the Excise Department to cooperate.

18. Ms Thadani states that Dhall does not wish to continue with the license of the Worli premises and intends to surrender these. Mr Kantawala accepts the surrender and says he has no surviving financial claim against Dhall. Accordingly Dhall will return possession of the licensed Worli premises to Popat by the end of the day 18th April 2022.

19. Dhall will make arrangements for transportation of the inventoried stock from Worli and from the Customs Bonded Warehouse to the Excise Department Sewri godown between 18th and 19th April 2022 (two of the intervening days being public holidays).

20. Once the goods are removed, Dhall or Popat as the case may be are at liberty to remove any remaining seals of the Excise Department.

21. This order is sufficient to dispose of both Petitions. In case of difficulty liberty to the Petitioners to apply.

(Madhav J. Jamdar, J)

(G. S. Patel, J)