IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.02.2022
Pronounced on	04.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.1553 of 2021
and
W.M.P.No.1760 of 2021

M/s.Allied Blenders and Distillers Private Limited,
GST No.36AAACY3846K1ZY,
H.No.8-2-684/4/13/1, Plot No.18, Anand Nivas,
Anand Banjara, Road No.12,
Banjara Hills, Hyderabad - 500 034.
and also at
No.111, Glumohar Block 4,
Alliance Orchids Springs,
54, Water Canal Road, Korattur,
Chennai - 600 080. ... Petitioner

Vs.

1.Commissioner of Excise,
Central Excise and Service Tax Commissionerate,
Puducherry,
1, Gouber Avenue, Beach Road,
Puducherry.

2.Deputy Commissioner of Excise,
Central Excise and Service Tax Commissionerate,
Puducherry,
1, Gouber Avenue, Beach Road,
Puducherry.

3.Tahsildar, SHO,
Excise PS, Office of the Deputy Commissioner,
Puducherry, Katterikuppam,
Puducherry, Puducherry, India.

4.M/s.Premier Distilleries Private Limited,
No.377, First Floor, Anna Salai,
Pondicherry - 605 001.

5.The Inspector of Police,

CBCID Police Station,
Puducherry.
(R5 impleaded vide order dated 16.12.2021, made in W.M.P.No.26611 of 2021 in W.P.No.1553 of 2021)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to consider the petitioner's representations dated 20.07.2020 and 22.10.2020 and release the raw materials/goods/stocks and finalised goods seized/detained by the respondents 1 to 3 and permit the petitioner to remove and transport the same to the manufacturing unit of the petitioner located at Survey No.700, Rangapur Village, Pebbair Mandal, Wanaparthy District, Telengana - 509104.

For Petitioner : Mr.Sathish Parasaran
Senior Counsel
for Mr.N.P.Vijay Kumar

For R1 to R3 : Mr.J.Kumaran
Additional Government Pleader
[Pondicherry]

For R4 : Mr.N.Murali

O R D E R

This Writ Petition has been filed under Article 226 of the Constitution of India for a Writ of Mandamus to direct the respondents 1 to 3 to consider petitioner's representations, dated 20.07.2020 and 22.10.2020 and to release the raw materials, goods, stock and finished goods seized and detained by the official respondents 1 to 3 and to permit the petitioner to remove and transport the same to the manufacturing unit of the petitioner located at Survey No.700, Rangapur Village, Pebbiar Mandal Wanaparthy District, Telangana.

2. It is the specific case of the petitioner that the petitioner has entered into a manufacturing agreement with the fourth respondent namely Premier Distilleries Private Limited which had allegedly indulged in removal of alcoholic beverages and violated the provisions of the Pondicherry Excise Act, 1970.

3.The learned Senior Counsel for the petitioner submits that the fourth respondent was merely a bottling unit engaged to manufacture goods for the petitioner on principal to principal basis and that the fourth respondent was not an authorized one to sell any of the products without the permission of the petitioner using the petitioner's essence and other raw materials of the petitioner which included ENA, holograms, stickers, bottles, etc.

4.The learned Senior Counsel for the petitioner submits that there is watertight agreement and secures the interest of the petitioner and that even if the fourth respondent indulges in evasion of duty under the aforesaid Act, the Officers enforcing the provisions of the aforesaid Act cannot seize goods which were lying with the fourth respondent for manufacturing purpose under the manufacturing agreement dated 31.12.2019.

5.The learned Senior Counsel for the petitioner submits that in terms of the representations, dated 20.07.2020 and 22.12.2020, the estimated value of the petitioner's seized goods was Rs.1,99,74,862/- as detailed below:-

SUMMARY OF STOCKS AND MATERIALS:-

DETAILS	UOM	QTY	VALUE
Stock of Raw Material-ENA	BLS	51,932	30,03,429
Other Raw Materials (CAB, FMS, MMS, GRAPE SPIRIT etc.)	BLS	7,772	25,25,884
Semi-finished goods (Blend)	BLS	9,260	2,70,857
Other Raw Materials (Essence, Caramel)		1 Lot	1,18,939
Finished Goods	Cases	14,771	79,35,892
Packing Material	Nos.		61,19,901
TOTAL			1,99,74,862

6.The learned Senior Counsel for the petitioner submits that the petitioner's raw material has not been reflected in the order and since these materials are still lying with the fourth respondent, they should be allowed to hand over it to the petitioner as the respondents cannot have any lien over the goods belonging to the petitioner. It is submitted that the petitioner merely appointed the fourth respondent as a bottling unit for manufacturing of alcohol beverages under the said agreement.

7.The learned Additional Government Pleader for the respondents 1 to 3, on the other hand, submits that the goods were initially seized and thereafter in Crime No.121/2020 was registered before the jurisdictional Police Officer, Puducherry and thereafter, another case was registered in C.P.Nos.268, 269 and 270/2020.

8.The learned Additional Government Pleader for the respondents 1 to 3 submits that what was seized from the premises of the fourth respondent was only bottles and few other items as detailed below;-

(i) Abstract of Liquor bottles with various holograms in M/s.Premier Distilleries Limited, Mangalam, Puducherry.

Sl. No.	Hologram Type	No. of Cases	No. of Bottles
1.	Counterfeit Hologram Cases	22,374	8,46,825
2.	Original Hologram Cases	16,588	5,63,981
3.	Without Hologram Cases	793	1,07,664
4.	Old Cases	355	18,420
5.	Damaged Cases in various Brands & quantities	81	Not taken into account
	TOTAL	40,191	15,36,890
6.	Fully damaged by load man during verification (Deduction)	5	60
	TOTAL	40,186	15,36,830

(ii). Abstract of Liquor bottles with counterfeit holograms at Godown premises of Premier Distilleries Private Limited at 2nd Cross, Sithankudi, Puducherry,

Sl. No.	Hologram Type	No. of Boxes	No. of Bottles
1.	Counterfeit Hologram Cases	13	383

(iii). Abstract of Liquior bottles with counterfeit holograms at FL-1 retail shop premises of Premier Distilleries Private Limited at Anna Salai, Puducherry.

Sl. No.	Hologram Type	No. of Cases	No. of Bottles
1.	Counterfeit Hologram Cases	50	1916

(iv) Total abstract of Liquor bottles seized from the licensed premises of Distillery, Godown and FL-1 retail shop of the M/s Premier Distilleries Private Limited, Puducherry.

Sl. No.	Place of Stock Verification	No. of Cases/Boxes	No. of Bottles
1.	Premier Distillery Licensed Premises, Mangalam	40,186	15,36,830
2.	FL-1 Shop, Anna Salai, Puducherry	50	1916
3.	Godown, Premises at Sithankudi, Puducheery.	13	383
	TOTAL	40249	15,39,129

9.It is further submitted that it is for the petitioner to file application for return of seized goods in Crime No.121/2020. It is submitted that the respondent filed Crl.M.P.No.4221/2020 in Crime No.121/2020 before the learned Judicial Magistrate-IV at Puducherry. The learned Judicial Magistrate-IV, Puducherry, passed an order dated 19.12.2020 in Cr.M.P.No.4221/2020 in Crime No.121/2020, thereby, permitting to return the liquor bottles that were held under the judicial custody. Further, the learned Judicial Magistrate-IV, Puducherry, vide the said order also permitted for the disposal of the above said liquor bottles at the earliest.

10.It is further submitted that subsequent to order passed by the learned Judicial Magistrate, Puducherry, in Cr.M.P.No.4221/2020 in Crime No.121/2020, the respondent Excise Department has initiated action to dispose the stocks in accordance with the provisions contained in Section 43 of the Pondicherry Excise Act, 1970. It is submitted that the fourth respondent filed a revision petition under the Pondicherry Excise Act, 1970, before the learned Additional Sessions Judge at Pondicherry in Cr.R.P.No.02 of 2021, praying to grant interim stay for the order passed by the learned Judicial Magistrate-IV, Puducherry, in Cr.M.P.No.4221/2020 in Crime No.121/2020 as the said order was passed without issuing notice to the fourth respondent M/s.Premier Distilleries Private Limited, vide Cr.R.P.No.2 of 2021 in Cr.M.P.No.149 of 2021. It is submitted that the department has also filed counter affidavit in the said Revision petition praying to dismiss the Revision petition filed by the fourth respondent so as to dispose the stocks as per the provisions of Section 43 of the Pondicherry Excise Act, 1970 and therefore, as on date, the matter is under subjudice before the learned III Additional Sessions Judge at Pondicherry.

11.The learned Additional Government Pleader for the respondents 1 to 3 further submits that against the order of the learned Judicial Magistrate-IV, Puducherry, the fourth respondent bottling unit has filed Cr.R.P.No.02 of 2021 and the same is pending before the learned III Additional Sessions Judge at Pondicherry. It is therefore, submitted, it is for the petitioner to work out the remedy before the aforesaid judge, by filing appropriate petition.

12.The learned Additional Government Pleader for the official respondents viz., R1 to R3 has filed a report of the seized goods from the premises of the 4th respondent/Distilleries, the contract manufacturer of the petitioner. The learned Additional Government Pleader for the official respondents submits that since the 4th respondent was found indulging in clandestine removal of the manufactured stock in violation of the provisions of the Pondicherry Excise Act, 1970, the stock finished goods and raw materials were seized under the provisions of the Pondicherry Excise Act, 1970.

13.It is submitted that two different complaints were filed. It is submitted that Crime No.121/2020 was filed under Sections 484, 486, 468, 471, 472, 474 and 420 IPC r/w Section 34 IPC and that the counterfeit holograms were seized by the Police and that the FIR registered by Mangalam Police Station was later transferred to CBCID, Police Department, Puducherry.

14.As far as the raw materials are concerned, it is submitted that a separate complaint was filed and FIR was registered on 23.06.2020 in Crime No.44/2020 under Sections 31 (g), 34 & 35(1)(b) of the Pondicherry Excise Act, 1970 and that the Blending and Bottling tanks installed in the premises of the distillery were sealed. It is further submitted that the premises of the 4th respondent was also sealed. It is further submitted that the total quantity of 1,06,637.91 litres of Extra Neutral Alcohol [ENA] was sealed while sealing the premises of the fourth respondent.

15.It is further submitted that the details of the brands for which the ENA and blends were stored in tanks, quantity of other raw materials like CAB, FMS, Grape Spirit, Essence, Caramel are not readily available and the same could be ascertained only on verification of the records kept in the premises, which requires the permission of the learned Judicial Magistrate-IV, Puducherry.

16.The learned Additional Government Pleader for the respondents 1 to 3 submits that there is prior dispute between the petitioner and the fourth respondent and therefore, in case of any violation of the statutory requirements under the provisions of the Pondicherry Excise Act, 1970 by the fourth respondent, the petitioner have to work out the remedy by invoking the arbitration clause as per the agreement between the petitioner and the fourth respondent.

17.In this connection, a reference was made to the communication dated 16th June 2020 exchanged between the petitioner and the fourth respondent, wherein the petitioner has put the fourth respondent to terms.

18.It is submitted that as per the conditions prescribed in the distillery licence granted for manufacture bottling of liquor and as per the extant provisions contained in the Pondicherry Excise Act, 1970 and the rules made thereunder, the licence is liable for suspension/cancellation for violation of the licence conditions. Therefore, the Excise Commissioner cancelled the licence of the fourth respondent M/s.Premier Distilleries Private Limited for violation of licence conditions as the fourth respondent licensee was involved in counterfeiting the holograms issued by the Excise Department for affixing on the liquor bottles manufactured in the distillery to prevent the pilferage of revenue to the public exchequer and as such acted with mala-fide intention to cheat the Government. Further, the Department has also initiated action to dispose the balance stocks held by the licensee at the premises of the distillery through confiscation in view of the request made by the fourth respondent through representations dated 20.07.2020 and 22.10.2020, but the same could not be materialized due to Revision Petition filed by the fourth respondent M/s.Premier Distilleries Private Limited against the order of the learned Judicial Magistrate, Puducherry, in Cr.M.P.No.4221/2020 in Crime No.121/2020, wherein the learned Judicial Magistrate-IV granted permission to confiscate the stocks kept at the distillery. As such the respondent Department has taken all possible efforts to dispose the stocks in accordance with the provisions of the Pondicherry Excise Act, 1970 and the rules made thereunder. As such, the allegations of the petitioner that the respondent has failed to take action in deciding his representations, dated 20.07.2020 and 22.10.2020, is baseless and therefore denied.

19.The learned Additional Government Pleader for the respondents 1 to 3 submits that the provisions of Cr.P.C has been made applicable for search and seizure under the provisions of the Pondicherry Excise Act, 1970. It is submitted that the procedures prescribed under Section 102 r/w 457 Cr.P.C were followed and therefore, the petitioner has to work out its remedy under the procedures prescribed in Cr.P.C.

20.The learned counsel for the private respondent viz., 4th respondent/contract manufacturer submits that the stock and raw materials including the ENA can be ascertained, if an Advocate Commissioner is appointed and after ascertaining the same, the goods belonging to the petitioner can be released.

21.By way of rejoinder, the learned Senior Counsel for the petitioner submits that the respondents have no authority under the law to effect seizure of the raw materials of the petitioner which was under the custody of the 4th respondent. It is submitted that if the 4th respondent had indulged in clandestine removal of the manufactured stock and used the Holograms of the petitioner and others, for whom also, the 4th respondent had undertaken contract manufacturing.

22.It is submitted that Section 102 Cr.P.C. which has been made applicable to the provisions of the Pondicherry Excise Act, 1970 will be attracted only where the goods were used for commission of any offence. It is submitted that the raw materials given to the fourth respondent under the manufacturing agreement seized by the authorities were not intended for committing any offence. It is submitted that the raw materials which were given to the fourth respondent for manufacturing purpose can neither be seized nor confiscated and that even if a seizure was effected, the details should have been furnished to the petitioner to reclaim the same. It is further submitted that the petitioner cannot be asked to approach the learned Judicial Magistrate to get the details of the seized goods and the statement can be given by the official respondents herein regarding the details of the seized goods. Therefore, it is submitted that the impugned proceedings of the official respondents in refusing to release the goods/raw materials of the petitioner cannot be sustained.

23.I have also considered the arguments advanced by the learned senior counsel for the petitioner, the official respondents and the fourth respondent contract manufacturer.

24.The Excise Commissioner appears to have cancelled the manufacturing licence issued to the fourth respondent for having used counterfeit holograms to evade Excise Duty under the provisions of the Puducherry Excise Act, 1970.

25.In the course of the aforesaid proceedings, not only the bottles bearing counterfeit holograms but also bottles bearing original hologram and other goods were seized as detailed in the report.

26.As far as the raw materials of the respective brand owners and the marketing company are concerned, they are in the premises of the respondent under the lock and seal of the Excise Department.

27.No separate quantity or inventory wise detail has been made. The official respondents have stated that the details of the brand for which the ENA and blends which were stored in the tanks, quantity of other raw materials like CAB, FMS, Grape Spirit, Essence, Caramel were not readily available.

28.If there was seizure of these raw materials, it had to be in accordance with the provisions of Criminal Procedure Code as is evident from section 54 of the Puducherry Excise Act, 1970.

29.Section 54 of the Pondicherry Excise Act, 1970 reads as under:

> ''Power of Excise officers in matters of investigation
>
> 54. (1) Any Excise Inspector or any Excise Officer not below such rank and within such specified area as the Government may, by notification, prescribe, may, as regards offences under Section 31, Section 32, Section 33, Section 35 or Section 36, exercise powers conferred on an office in charge of a police station by the provisions of the Code of Criminal Procedure, 1898:
>
> Provided that any such power shall be subject to such restrictions and modifications, if any, as the Government may prescribe.
>
> (2) For the purpose of section 156 of the said Code, the area in regard to which an Excise Inspector is empowered under sub-section (1), shall be deemed to be a police station and such officer shall be deemed to be the officer in charge of such station.''

30.As per Section 54 of the above Act, an Excise Inspector or any Excise Officer not below such rank and with such specified area as the Government may specify, by notification, as regards offences under Sections 31, 32, 33 and 35 or under Section 36 can exercise power conferred on an office in charge of a Police Station by the provisions of the Code of Civil Procedure.

31.Thus, for offences committed under the provisions of the Puducherry Excise Act, 1970, the Excise Inspector's power is synonymous with the powers of the officers of the jurisdictional Police Station.

32.As per Section 56 of the Act, any Excise Officer below the rank of an Excise Inspector may make any arrest, seizure or search under the Act. Such Officer shall file a report with all particulars of arrest, seizure or search to his immediate superior official.

33.Section 56 of the Pondicherry Excise Act, 1970 reads as under:-

> ''Report by Excise Officer
>
> 56. Where any Excise Officer below the rank of an Excise Inspector makes any arrest, seizure or search under this Act, he shall, within twenty four hours thereafter-
>
> (a) make a full report of all the particulars of the arrest, seizure or search to his immediate official superior, and
>
> (b) unless bail be accepted under Section 58, take or send the person arrested or the things seized, with all convenient despatch to a Magistrate for trial or adjudication.''

34.Sub-clause (b) states that unless bail be accepted under Section 58, he shall take or send the person arrested or the things seized, with all convenient dispatch to a Magistrate for trial or adjudication.

35.The official respondents have not filed any seizure memo or a Mahazar before this Court particularising the quantity of ENA and blends stored in the tanks, quantity of other raw materials like CAB, FMS, Grape Spirit, Essence, Caramel etc. In their counter affidavit, the official respondents have merely stated that the details were not readily available.

36.Thus, these raw materials are lying in the premises of the fourth respondent under lock and seal. No seizure was effected as otherwise a detailed report of such raw materials would have been prepared and filed by the Officer before the superior official under Section 56 of the Act.

37.It will be therefore useful to refer to some of the provisions of the Code of Criminal Procedure, 1973, as made applicable to the Pondicherry Excise Act, 1970. However, in the Pondicherry Excise Act, 1970, the power to effect seizure is with the Excise Office or the Inspector of Excise. Sections 102 and 457 of Cr.P.C. are reproduced below:

Section 102	Section 457
Power of police officer to seize certain property. (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances, which create suspicion of the Commission of any offence. (2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer. (3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the court as and when required and to give effect to the further orders of the court as to the disposal of the same.]	Procedure by police upon seizure of property. (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

38.Provisions of Section 102 of Code of Criminal Procedure even if made applicable to the provisions of the Puducherry Excise Act, 1970, is not attracted to the raw materials of the petitioner, as the said provision applicable only in the context of stolen goods.

39.Section 457 of the Code of Criminal Procedure pre-supposes a seizure of property and where such property is not produced before a criminal for during an enquiry or trial, the

Magistrate may make such order as he thinks fit respecting the disposal of such property or deliver such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

40.Further, the Magistrate can order delivery of seized goods to such person during enquiry or trial, if the identity of the person so entitled is known. If seizure has been effected, the official respondents were required to give details of seizure in a report and filed before the Magistrate, in which case, the Magistrate would have issued an appropriate order for delivery of such goods.

41.Though copies of revision petition filed before the learned III Additional Sessions Judge, Puducherry, is not available, what is evident is that, it is confined to only item specified in the Table I and II of the report of the official respondent which has been extracted above.

42.In case, these raw materials were seized, the Magistrate has to in any event order delivery to the petitioner in terms of Section 457 of the Code of Criminal Procedure.

43.On the other hand, if no seizure was made, the official respondents shall release the goods/raw materials of the petitioner forthwith in any event within a period of 30 days from date of receipt of this order.

44.The petitioner cannot be made to run from pillar to post for no fault of theirs merely because they had engaged the services of the fourth respondent as a contract manufacturer/ job worker to manufacture Indian Made Foreign Liquor by supplying the required raw materials as detailed above.

45.A mere lock and seal of the premises is not sufficient to conclude a valid seizure if there is no Seizure Mahazar. The officer themselves can allow the release of the goods lying in the distillery of the fourth respondent. Either way, raw materials of the petitioner cannot be retained. Under the circumstances, I am of the view that petitioner has made out a case for release of the raw materials.

46.The official respondents are therefore directed to take steps for release of the raw materials of the petitioner immediately, preferably within 15 days from the date of a copy of this order. It is made clear that all the procedural requirements that are required to be observed shall be without prejudice to the rights of the petitioner.

47.The fourth respondent is directed to coordinate with the respondents for the release of the raw materials of the petitioner. The official respondents shall prepare proper delivery note evidencing the release of the raw materials and file a report before the concerned Magistrate.

48.This Writ Petition is allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

jen/smn2

To

1.The Commissioner of Excise,
Central Excise and Service Tax Commissionerate,
Puducherry, 1, Gouber Avenue, Beach Road,
Puducherry.

2.The Deputy Commissioner of Excise,
Central Excise and Service Tax Commissionerate,
Puducherry, 1, Gouber Avenue, Beach Road,
Puducherry.

3.The Tahsildar, SHO,
Excise PS, Office of the Deputy Commissioner,
Puducherry, Katterikuppam,
Puducherry, Puducherry, India.

4.The Inspector of Police,
CBCID Police Station,
Puducherry.

+1cc to Mr.N.P.Vijaykumar, Advocate, S.R.No.15002
+6cc to Mr.N.P.Vijaykumar, Advocate, S.R.No.15002(22/03/2022)

W.P.No.1553 of 2021

SPD(CO)
SB(18/03/2022)