Neutral Citation No.2023:PHHC:094250-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.28829 of 2018
Date of Decision: 18.07.2023

M/s Silver Oak (India) Limited ... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ajay Jagga, Advocate,
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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MANISHA BATRA, J.

1. The instant writ petition has been filed by the petitioner-Company which is running a bottling plant in Madhya Pradesh and is also engaged in the business of manufacturing and supply of Indian Made Foreign Liquor (IMFL) seeking quashing of order dated 28.08.2018 (Anneuxre P-13) as passed by respondent No.2 and order dated 07.10.2008 (Annexure P-3) as passed by the respondent No.3 whereby penalty under the provisions of Punjab Excise Act, 1914 (for short "Act, 1914") was imposed upon it.

2. Brief facts of the case are that the petitioner had dispatched liquor from its bottling plant existing at Pithampur District Dhar, Madhya Pradesh on 27.04.2005 for supplying the same at Nagaland against a Military order. The goods were transported through vehicle bearing No.HR-55B-4089. The requisite Builty/Goods Receipt/Permit

for export of liquor issued by the concerned Excise Officer, Permit invoice and transport advice were accompanying the consignment. The vehicle proceeded for Nagpur as per the route given by the transporter and while it was on way to Ghaziabad and was moving at National Highway No.8 within the jurisdiction of District Gurgaon, the same was intercepted by the staff members of Excise Department. The respondent No.3 heard the case submitted by the petitioner and reserved orders which were never communicated to the petitioner. On 09.09.2015, the Government officials of State of Madhya Pradesh visited the bottling plant of the petitioner and sealed the same by conveying that a warrant of attachment as issued by the State of Haryana was to be executed. The petitioner then came to know about passing of impugned order dated 07.10.2008 (Annexure P-1) by the authorities of Excise Department of State of Madhya Pradesh. The petitioner applied for receipt of certified copy of the same and received copies of those orders only on 10.03.2016 and came to know that penalty of a sum of Rs.30 lacs under Section 61 (1) (aaa) of Act, 1914 had been imposed upon it.

3. It is further submitted that the petitioner challenged the order dated 10.03.2016 by filing appeal before the First Appellate Authority i.e. respondent No.2. The said appeal was, however, dismissed vide ex parte order dated 08.04.2016. The petitioner thereafter filed an application for review of order dated 08.04.2016 and sought interim relief of opening of bottling plant against bank guarantee. Thereafter the petitioner also moved an application for condoning the delay during the pendency of the review proceedings and on asking of respondent No.2 that its appeal would only be considered on depositing of the penalty amount, it deposited penalty amount

of Rs.10 lacs and furnished bank guarantees for a sum of Rs.20 lacs and thereafter its bottling plant was de-sealed. The review application was also allowed. However, the appeal filed by it was dismissed vide order dated 23.11.2017. The petitioner submitted that it received copy of order of dismissal of appeal only on 17.07.2018 and that too after filing of CWP No.17190 of 2018. The petitioner has prayed for quashing the orders dated 07.10.2008 (Annexure P-3) and 28.08.2018 (Annexure P-13) on the ground that they were without jurisdiction and that penalty had been imposed upon it in an illegal manner and no such penalty could be imposed under Section 61 (1) (aaa) of the Act, 1914 upon him. Further prayer has been made for directing the respondents to refund the amount collected from it by way of penalty.

4. In response to the notice of the petition, the respondents appeared and filed joint written statement taking objection to the effect that the petition was not maintainable as there was delay of more than seven years in filing appeal against the order dated 07.10.2008 as passed by the respondent No.3 and no prayer whatsoever for condonation of said delay had been made by the petitioner. On merits, it was asserted that the truck bearing No.HR-55B-4089 in which the liquor manufactured in the distillery of the petitioner had been transported, had entered into the State of Haryana on 27.04.2005 without having any transit slip. As per the petitioner, the said liquor was meant for Paramilitary Warehouse, Deemapur, Nagaland but, neither there was any marking/label on the bottles of liquors describing therein that they were meant for paramilitary forces nor the requisite documents to prove that infact the said liquor was being taken to Nagaland, had been produced by the driver of the vehicle. Rather he had recorded a

statement that the said liquor was to be unloaded in and around the area of Delhi. It was further submitted that show cause notice had been duly served upon the petitioner and its representative had appeared on 26.08.2008 and had submitted some documents. He had been called upon to produce more documents in the form of outward gate register and Excise verification report of the permit issued in favour of the petitioner but the same was not produced. The petitioner was very well aware about the passing of order dated 07.10.2008 and it was also communicated to it through registered (speed) post. It was denied that the requisite documents had been produced by the petitioner. It was also denied that the vehicle was on its proper route and while controverting the remaining pleas as taken in the petition, dismissal of the same had been prayed for.

5. Learned counsel for the petitioner vehemently argued that the impugned order dated 07.10.2008 (Annexure P-3) as passed by the respondent No.3 was liable to be set aside as no notice whatsoever about the said order whereby penalty to the tune of Rs.30 lacs had been imposed, had been given to it and the petitioner came to know about this order only on 09.09.2015 when the officials of the Government of Madhya Pradesh had come to seal its bottling plant. He submitted that the limitation to file appeal against the order dated 07.10.2008 commenced only w.e.f. 10.03.2016 when the certified copy of the impugned order dated 07.10.2008 had been supplied to it and not before that and, therefore, argued that the respondent No.2 had committed a grave error in dismissing the appeal filed by it for setting aside the order dated 07.10.2008. He further argued that the order dated 07.10.2008 was also not sustainable in the eyes of law as it was passed in an unjust, arbitrary and illegal manner. The respondent No.3 had

saddled the petitioner with penalty of a huge sum of money under Section 61 (1) (aaa) of the Act, 1914 without making due verification of the fact that the Government of Nagaland had issued import pass for supply of liquor by the petitioner to Paramilitary Forces and had issued approval for the same and no question as to genuineness of the documents produced by the petitioner and the driver of the vehicle carrying liquor had been raised by the authorities neither any inquiry was conducted in this regard. There was nothing on record to show that the consignment of liquor was meant for some other consignee. Only on the basis of the statement of the driver, the impugned order (Annexure P-3) could not have been passed against the petitioner. The respondent No.3 failed to judiciously consider the documents produced before him. A cryptic order was passed.

6. Learned counsel for the petitioner further argued that the impugned order (Annexure P-13) was based on conjectures and surmises with regard to receipt of intimation of the impugned order dated 07.10.2008 (Annexure P-3) by the petitioner and, therefore, it was argued that the impugned order dated 28.08.2018 was also liable to be set aside.

7. Per contra, it was submitted by Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana representing the respondents that show cause notice under Section 61 (1) (aaa) of Act, 1914 was issued against the petitioner on 24.05.2005 by the respondent No.3. The notice was duly served upon its authorized person for that date and even an Advocate had appeared before the respondent No.3 on 24.05.2005 and had submitted reply. The representative of the petitioner had also appeared before the respondent No.3 on 26.08.2008 and was heard at length. The respondent No.3 had passed order (Annexure P-3) on 07.10.2008 and copy of the same

was sent to the petitioner. It was well proved on record that the petitioner distillery being existing in far away State of Madhya Pradesh, its authorities did not bother to comply with the order Annexure P-3. It was submitted that the appeal against the impugned order (Annexure P-3) was filed after a gap of more than seven years and that too without moving any application for condonation of delay. The petitioner had not at all explained as to why after 26.08.2008, it had not bothered to inquire about the passing of order in the proceedings of show cause notice conducted against it and this fact itself was sufficient to show that the authorities of the petitioner were well aware of passing of the order (Annexure P-3) dated 07.10.2008. It was submitted that as the delay in filing the appeal against the order dated 07.10.2008 could not be satisfactorily explained by the petitioner nor he had moved any application for condoning the delay in the same, therefore, the respondent No.2 had rightly dismissed its appeal and no ground had been made out to challenge the same. With these broad arguments, it was submitted that the writ petition was liable to be dismissed.

8. We have heard learned counsel for the petitioner and learned Deputy Advocate General, Haryana and have carefully perused the record.

9. It is undisputed between the parties that on 27.04.2005, a truck bearing registration No.HR-55B-4089 carrying IMFL transported by the petitioner distillery had been intercepted by the officials of Excise Department, Gurugram from the vicinity of Gurugram. The vehicle was found to be carrying 800 cases of IMFL. Though the invoice permit for import of IMFL as issued by Commissioner of Excise and Director of Prohibition, Government of Nagaland, builty/GR and transport advice had been shown to the authorities, however, the case of respondents is that it

was noticed that no transit pass from passing through the State of Haryana had been obtained by the driver of the truck from the tax collection point. It was also noticed that though invoices were shown to be issued for supply of liquor to Paramilitary Forces, Nagaland against some military order but infact there was no labelling/mark on the bottles of liquor that they were meant for that purpose. It was also noticed that the vehicle was not enroute to Nagaland and was on a diverted route. Since all this was found to be suspicious, therefore, the vehicle as well as the goods/liquor were detained and show cause notice was issued to the petitioner by respondent No.3. According to the respondent, due opportunity of hearing was given to the petitioner by respondent No.3 and even the authorized representative of the petitioner had appeared in response to the show cause notice and had been duly heard on 26.08.2008 i.e. before disposing of the show cause notice.

10. Further, on perusal of Annexure P-3 i.e. copy of order dated 07.10.2008, this fact becomes clear that on 26.08.2008, Manager of the petitioner namely, Sh. Dinesh Dixit had appeared in response to the show cause notice and had submitted certain documents and was heard at length before the order was reserved on that date and the order on the show cause notice was pronounced on 07.10.2008. Undoubtedly, the respondents could not produce any document in the shape of postal receipt or endorsement made by the petitioner on record to prove that the order dated 07.10.2008 had been conveyed in writing to the petitioner either through registered post or through any other means. However, in the peculiar circumstances of the case when the petitioner chose to challenge the order dated 07.10.2008 by filing appeal after a gap of more than seven years and that too only when its distillery was ordered to be sealed, it clearly appears that the petitioner

intentionally avoided coming to know about the outcome of the proceedings initiated in response to the show cause notice by respondent No.3. When once it had received the show cause notice and had even sent its authorized representative to submit documents on 26.08.2008, then it was expected from the petitioner to remain vigilant as to what order was passed in the show cause notice issued by the respondents. Not making any effort to make inquiries about the outcome of the show cause notice cannot be stated to be a natural act and conduct of the petitioner especially in the circumstance when the goods dispatched by it i.e. 800 cases of liquor as well as the vehicle were under the detention of the authorities of Excise Department. There is nothing on record to suggest that it had got the same released at any point of time. It clearly appears that since the petitioner was existing and operating in a far away state of Madhya Pradesh, therefore, while presuming that apart from detaining the liquor and vehicle, no other action could be taken against it by the authorities of Excise Department, it did not bother to know about the order passed on the show cause notice or intentionally did not challenge the same depsite having knowledge about the same. It had chosen to challenge the order dated 07.10.2008 by filing appeal after an inordinate delay of seven years and even at that time did not move any application for condoning the delay in filing the same. In our considered opinion, the respondent No.3 while taking note of all these circumstances had rightly dismissed the appeal filed by the petitioner vide order Annexure P-3 and no fault can be found with this order. Further, the respondent No.2 had also discussed the matter in detail and had given a well reasoned findings while rejecting the appeal filed by the petitioner. As such, we see no reason for quashing the orders Annexure P-3 and Annexure P-13 passed by respondent Nos.3 and 2 respectively. Consequently, the writ petition is dismissed. No order as to costs.

(RITU BAHRI) **JUDGE**	**(MANISHA BATRA)** **JUDGE**

18.07.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No