IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.04.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.9378 of 2024
and W.M.P.No.10388 of 2024

M/s.Ravi Kumar Distilleries Limited,
Puducherry,
Represented by its Managing Director
Mr.R.V.Ravikumar ... Petitioner

-vs-

1.The Assistant Commissioner,
O/o. The Assistant Commissioner of GST & Central Excise,
Division - I, Government of India,
14, Municipal Street, Azeez Nagar, Reddiarpalayam,
Puducherry 605 010.

2.The Deputy Commissioner (Excise)
Government of Puducherry,
Industrial Estate Road, Thattanchavadi,
Puducherry 605 008.

3.M/s.Shashi Distilleries Private Limited,
No.501/A/4, 9th Mile Stone, Bannerghatta Road,
Bangalore 560 076.

4.M/s.Gemini Distilleries (Pondicherry) Inc.,

No.9, C.K.Garden,
St. Thomas Street, Bangalore 560 084.

5.John Distilleries Private Ltd.,
110, Pantharapalya, Mysore Road,
Bangalore 560 039.

6.M/s.Radico Khaitan Limited,
Bareilly Road, Rampur - 244 901, U.P.
Corporate Office at Plot No.J-1, Block B-1,
Mohan Cooperative Industrial Area,
Mathura Road,
New Delhi 110 044.

7.M/s.Tilaknagar Industries Ltd.,
P.O. Tilaknagar, Tai. Shrirampur, Dist. Ahmednagar,
Maharashtra 413 720
Corporate Office at Industrial Assurance Building,
3rd Floor, Churchgate, Mumbai 400 020. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the entire records of the first respondents being order-in-original No.26/2023-GST, dated 11.12.2023, passed by the first respondent and to quash the same.

For Petitioner : Mr.J.Adithya Reddy

For Respondents 1, 2 : Mr.Ramesh Kutty, Sr. SC

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ORDER

An order dated 11.12.2023 is assailed primarily on the ground that documents submitted by the petitioner were disregarded. The petitioner is engaged in business relating to the manufacture of alcoholic beverages. A show cause notice dated 29.09.2023 was received by the petitioner in relation to alleged non payment of GST. Such show cause notice was replied to on 24.10.2023 and again on 15.11.2023. The impugned order was issued in these facts and circumstances.

2. Learned counsel for the petitioner invited my attention to the petitioner's reply to the show cause notice and pointed out that the petitioner had asserted that it is engaged in the manufacture of alcoholic beverages and holds the necessary licence from the Puducherry Excise Department for such purpose. By referring to the

impugned order at page 140 of the paper book, learned counsel submits that the licence, the licence cum manufacturing agreement and other relevant documents were disregarded while issuing the impugned order.

3. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice for respondents 1 and 2. He points out that the statements of Smt.N.Nalini, Authorized Signatory, and Shri.R.V.Ravikumar, Managing Director, were taken into consideration while confirming the tax demand. By drawing reference to the statement of Smt.N.Nalini and, in particular, the answer to question 3 as well as the answer to question 1 of Shri.R.V.Ravikumar, learned senior standing counsel submits that the tax demand was confirmed by appraising all material evidence, including the above statements. He also refers to Circular No.160/20/2021-GST of the Ministry of Finance that job work in relation to the manufacture of alcoholic liquors for human consumption would attract GST of 18% as per the recommendations of the GST Council.

4. The operative portion of the impugned order is as under:

- *The taxpayer submitted that they are registered for manufacture of Alcohol for human consumption with a distinct Distillery Manufactory License issued by the Excise Commissioner, Government of Puducherry.*
- *They submitted that they have been paying Excise Duty on the sale of Alcohol.*
- *They further submitted that as per their License cum Manufacturing Agreement, the contract is for manufacture of Alcohol and that there is no intention to provide any contract of service as mentioned in the SCN.*
- *They submitted that as per the License cum manufacturing Agreement, the relationship between the parties is strictly on Principal to Principal basis.*
- *They submitted that they have paid GST for Job work services by error and that they are not liable to pay any GST as they have already been discharging Excise duty for sale of Liquor.*

It is seen from the record available that Smt.N.Nalini, Authorised Signatory, has stated in her voluntary statement before the ECM section, that they were doing Job work of manufacture of Alcohol. They have further stated that all the raw materials and packing materials are procured in the name of

M/s.Ravikumar Distilleries Ltd by their principals; that they manufacture/blend IMFL in their Distillery unit and bottle it and pay appropriate State Excise duty; that all purchases and sales happened in the name of M/s.Ravikumar Distilleries Ltd since they were holding state excise permit; that there was a bank account opened in the joint name of M/s.Ravikumar distilleries Ltd and the respective principal; that all payments for purchases were made by their principals from that account and sale proceeds are also received in that account; that they received bottling charges for manufacture of IMFL separately and were paying GST on such charges collected;

The Authorised Signatory further stated that they had been paying GST @ 18% for the period from July 2017 to November 2017; that subsequent to November 2017 they were paying GST @ 5% on bottling charges for a few of their principals and subsequent to April 2018 they were paying GST @ 5% on bottling charges for all of their principal manufacturer and that the loading and unloading charges are collected towards loading and unloading of finished goods to various places within Puducherry; that in certain principals they collect loading and unloading charges; that in certain principals the cost is included in the bottling charges.

Further, it is seen that Shri.R.V.Ravikumar, Managing Director of M/s.Ravikumar Distilleries Ltd., appeared on 27.09.2022 against the summons issued on 26.09.2022 and his voluntary statement [RUD-

3], he has inter alia stated:

- *that he has gone through the statement given by Smt.N.Nalini and fully agree with the statement; that Smt.Nalini has been working with them for the last 23 years and knows the state of affairs of the company and her statement is binding on them.*
- *that they were doing job work of manufacture of alcohol to the following brand owners viz. M/s.Shashi Distilleries Pvt Ltd, M/s.Mandovi Distilleries & Breweries Ltd, M/s.Tilak Nagar Industries and M/s.Gemini Distilleries Inc., M/s.Imperial Distilleries & Vintners (P) Limited, M/s.Relyon Marketing Pvt ltd., M/s.RadicoKhaitan Ltd, M/s.John Distilleries Ltd., and M/s.Helios Alcobev Pvt Ltd.*

Further, If the Taxpayer had any doubt about the taxability or otherwise of the activity undertaken by them under GST law, they had on option of filing an Application for Advance Ruling as per Section 97 of the CGST Act 2017 to determine the taxability of their supply; however they have not opted for the same and have continued to pay GST at the rate of 5% on the said Job work charges.

Hence, the taxpayer's contention now, that the supply is not taxable after the issue of SCN is not acceptable and appears to be an afterthought. Hence, I am inclined to hold the amount of Rs.1,36,94,230/- (IGST-Rs.1,36,94,230/-) demanded in the SCN as payable."

5. The above extract reveals that the assessing officer took into account the evidence placed on record, including the licence issued by the Excise Commissioner, the licence cum manufacturing agreement and the statements of Smt.N.Nalini and Shri.R.V.Ravikumar. Upon appraisal of such evidence, materiality and weight was assigned to such evidence while drawing conclusions. In exercise of discretionary jurisdiction under Article 226, I am not inclined to interfere with the impugned order in these facts and circumstances.

6. The impugned order is dated 11.12.2023 and this writ petition was filed in January 2024. As of the date of filing, the limitation period had not expired. As on date, the condonation period is on the verge of expiry. In these circumstances, it is just and appropriate that the petitioner be permitted to present a statutory appeal.

7. Therefore, W.P.No.9378 of 2024 is disposed of by permitting the petitioner to present a statutory appeal within ***ten days*** from the date of receipt of a copy of this order. If such statutory appeal is presented within the aforesaid period, the appellate authority is directed to receive and dispose of the same on merits without going into the question of limitation. No costs. Consequently, W.M.P.No.10388 of 2024 is closed.

10.04.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

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