(2016) 03 RAJ CK 0008

In the Rajasthan High Court

Case No : DB Civil Writ Petition No. 10783/2015

AU Financiers (India) Ltd. APPELLANT

Vs

State of Raj. and Others RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Arms Act, 1959 — Section 25, Section 3
Constitution of India, 1950 — Article 14, Article 21
Income Tax Act, 1922 — Section 30, Section 46
Rajasthan Excise Act, 1950 — Section 19, Section 54, Section 54A, Section 54-A, Section 6

Citation : (2016) 03 RAJ CK 0008

Hon'ble Judges : Ajay Rastogi and J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Prakul Khurana, for the Appellant; R.B. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Ranka, J.—1. Instant writ petition has been filed assailing to proviso to Sec. 9A(1) of the Rajasthan Excise Act, 1950 (for short, ''Act, 1950'') as also the impugned orders dt. 23/06/2014, 09/12/2014 and 09/03/2015 respectively on the premise that Sec. 9A(1) of the Act, 1950 is unconstitutional and ultravires to the Constitution of India as the pre-deposit of 75% of the demand created by the respondents is onerous, highly excessive, unreasonable and is nothing else but to put a bar or restriction on the right to appeal of the aggrieved parties.

2. Brief facts noticed on perusal of material on record and hearing the arguments, are that the petitioner is a registered company and claims to be a non-banking finance company engaged in the business of providing financial services to its customers such as home loans, vehicle loans etc. A vehicle namely; Mahindra Scorpio, bearing registration No. RJ-44-UA-0088, owned by one Leeladhar S/o. Gutaram, r/o. Chadhwas, Police Station Chhapar, Distt. Churu, came to be confiscated/seized on 23/01/2014 on the premise that in the said vehicle, illicit liquor, bearing 1 cartoon, 10 bottles and 28 quarters of ''Officer

Choice Superior Whiskey'' (for sale in Haryana) as also one 39 bore revolver with ten live cartridges were found during, sudden inspection of the said vehicle near Deedwana and a case u/sec. 19/54 of the Act, 1950 & Sec. 3/25 of the Arms Act was made out and two FIRs bearing No. 19 & 20 dt. 23/01/2014 came to be registered u/sec. 19/54 of the Act, 1950 & Sec. 3/25 of the Arms Act respectively at Police Station Deedwana, Distt. Nagaur. A detailed order dt. 23/06/2014 (Ann. 6) came to be passed by the Additional Commissioner, Excise, though after providing adequate opportunity to the owner (Leeladhar) who appeared before the said authority, holding that the use of the vehicle was for entirely different purpose then for which the vehicle is used as the vehicle was found carrying illicit liquor and therefore, in terms of Sec. 54A read with Sec. 69(4) of the Act, 1950, it was directed that the vehicle be confiscated. A fine of Rs. 5,10,000/- was imposed and it was provided in the order that if Leeladhar (owner of the vehicle) deposits an amount of Rs. 5,10,000/-, then the vehicle can be released to him (the owner) and in case the amount is not deposited, the vehicle be auctioned in accordance with law. It was also expressed that against the said order, an appeal lies before the Excise Commissioner, Rajasthan at Udaipur. It appears that an appeal came to be filed by the petitioner and not by the actual owner before the Excise Commissioner against the order dt. 23/06/2014, however, the Excise Commissioner, taking into consideration the provisions of Sec. 9A(2) & (4) of the Act, 1950, rejected the appeal as it was not in accordance with law, since neither the appeal was filed within the prescribed period of 60 days nor 75% of the amount demanded as pre-deposit was deposited. The petitioner further filed a revision petition before the Rajasthan Tax Board and the Rajasthan Tax Board vide order dt. 09/03/2015 upheld the order passed by both the lower authorities and rejected the appeal on account of not complying with the provisions of the Act, 1950.

3. Ld. counsel for the petitioner contended that the provisions of Sec. 9A(1) of the Act, 1950 are arbitrary and unreasonable and mandating to deposit 75% of the disputed amount is virtually debarring a litigant from availing remedy available under the law. It is further contended that no notice was given to the petitioner as the petitioner becomes owner since in the registration certificate, name of the petitioner also finds place and the order passed by the Additional Commissioner Excise, without issuing a show cause notice and without hearing the petitioner, is in violation of the principles of natural justice.

4. It is further contended that if the original owner for any good reason does not avail the remedy available to him, at least the petitioner steps in the shoes of the original owner and contended that right of the petitioner cannot be curtailed. It is further contended that u/sec. 9A of the Act, 1950 the amount prescribed is 75% of the demand created but in the instant case, it is not in the nature of demand rather it is a fine which, prima-facie, does not come within the domain of the amount demanded. He also contended that in majority of the cases, vehicles are financed by the Banks and various financial companies where the interest like the petitioner are secured and attached to the vehicle. It is further contended that on

one hand, loan was financed to the borrower and if for any good reason, the borrower does not turn up, asking the petitioner, who is a financier, to pay 75% amount of the demand created would be too much and is violative of their fundamental rights.

5. He further contended that on the one hand, the owner only partially paid the installments and substantial amount is recoverable and on top of it if 75% is required to be further deposited then it would be indeed asking too much. He relied upon the judgments rendered in the case of S. Kumar Developers and Builders Vs. Bhimrao: , 2012 (6) ALLMR 575; Union of India Vs. Bharat Lal & Ors. (DB Civil Writ Petition No. 574/2005), decided at Principal Seat of this Court at Jodhpur on February 19, 2010; Bindhu K.S. Vs. The Secretary & Ors. (WP ? No. 13661 of 2009 ?, decided by High Court of Kerala at Ernakulam on 19th June, 2009; Shri Mafaldo Fernandes Vs. Shri Kushali S. Kalekar , 1997 (2) Bom CR 73; Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar: , AIR 1963 (SC) 786.

6. Per-contra, ld. counsel for the respondent-Revenue contended that registered owner of the seized vehicle was Leeladhar and show cause notice was served upon the registered owner of the vehicle who even appeared and the petitioner can not be said to be owner as prescribed u/sec. 69(4) of the Act, 1950. He further contended that the notice prescribed under the law was served to the owner Leeladhar and the petitioner cannot be said to be in any case aggrieved and it is open for the petitioner to avail remedy to recover the outstanding loan amount, if any due, from the borrower Leeladhar rather than filing the instant petition. He contended that the petitioner had no right but still he preferred appeal after obtaining copy of the impugned order before the Excise Commissioner and also before the Rajasthan Tax Board who did not entertain the same because of the mandate of Sec. 9A of the Act, 1950 which postulates that one has to deposit 75% same having not been deposited, the appeal was incompetent and rightly not entertained.

7. He further contended that this Court in the case of Sawai Madhopur Oil & Pulse Industries & 74 Ors. Vs. State of Raj. & Ors. , 2001 (3) WLC (Raj.) 419 has upheld the validity of Sec. 9A and held to be intravires, the writ petition challenging vires of Sec. 9A deserves no merit.

8. Having heard counsel for the parties and having perused the material on record, in our view, the writ petition is wholly without substance and is liable to be dismissed.

9. We have already taken into consideration the facts noticed herein before. Admittedly, on interception of the vehicle, if it is found that it was carrying illicit liquor of substantial quantity is an offence and a case u/sec. 19/54 of the Act, 1950 has to be registered against driver & registered owner of the vehicle. Section 19 of the Act, 1950 prescribes for possession of excisable articles in excess of the quantity prescribed by the State Government is prohibited except

under permission but in the instant case, admittedly there was no permission with Leeladhar (registered owner) to carry such illicit liquor.

10. Sec. 54 of the Act, 1950 prescribes penalty for unlawful import, export, transport, manufacture, possession etc., in the facts and circumstances, has been imposed on the owner of the vehicle in question of Rs. 5,10,000/-. Section 69(4) of the Act, 1950 prescribes that what can be confiscated under the Act and sub-clause (4) prescribes of ''conveyance''. Therefore, Sec. 19 read with Sec. 54 and Sec. 69(4) of the Act, 1950 is attracted in the instant case.

11. Admittedly, two FIRs came to be registered against Leeladhar, one u/sec. 19/54 of the Act, 1950 and the other u/sec. 3/25 of the Arms Act and admittedly the owner Leeladhar appeared before the Additional Commissioner on a proper show cause notice having been received by him before passing of the order dt. 23/06/2014.

12. Admittedly, the petitioner is merely a financier of the alleged vehicle and the name of the petitioner might have been endorsed in the registration certificate as a financier but it is only for the purpose of finance made available by the petitioner over the vehicle. On perusal of the certificate of registration (Ann. 3), it reveals that the vehicle in question was purchased from M/s. Bikaner Motors Pvt. Ltd. and the registered owner''s name has been shown as Leeladhar S/o. Gutha Ram and merely there is an endorsement in the certificate of registration to the effect that "the motor vehicle above described is subject to hypothecation in favour of AU Financiers India Ltd". Therefore, to say that the petitioner stepped into the shoes of Leeladhar is ill-founded. The vehicle has simply been hypothecated by the petitioner.

13. The claim put by the counsel that the petitioner is not liable to deposit 75% of the demand is ill-founded. If any person including petitioner claims to be aggrieved and stated that he stepped into the shoes of the registered owner, it is for the petitioner to deposit 75% of the demand provided u/sec. 9A of the Act, 1950. Nevertheless, the appeal was preferred before the Commissioner (Excise) Rajasthan Udaipur who being appellate authority has rightly held that the appeal can be entertained if the petitioner deposits 75% of the demand raised in question. The right of appeal is a statutory right and it can always be circumscribed with pre-condition in fiscal matters.

14. The Apex Court in the case of Anant Mills Company Ltd. Vs. State of Gujarat: , 1975 (SC) 1234 held as under:-

" ..... The right of appeal is a creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that '' ..... no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid.'' Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of article 14 in it...."

15. In the case of M/s. Sawai Madhopur Oil & Pulse Industries & 74 Ors. Vs. State of Raj. & Ors. (supra), a Division Bench of this Court had an occasion to consider Sections 9-A, 19-B, 54-A and 69(4) of the Act, 1950 and instant case is identical to the case of M/s. Sawai Madhopur Oil & Pulse Industries & 74 Ors. (supra) which also related to illicit liquor having been found, it was held that provisions are intravires and cannot be said to be ultravires. It would be appropriate to quote para 45 of the said judgment which reads ad-infra:-

"45. It was argued by the learned counsel for the petitioners that there is also discrimination between Government vehicle and private vehicle and that the amendment Act confers unguided powers upon the Excise Authorities to seize a vehicle, whether there is one bottle or one pouch in it and for that, same offence is punishable. It is submitted that Section 54-A is further discriminatory, because, from the perusal of it, it becomes clear that presumption is against offence and not against vehicle, and once the presumption is against the offence, then, for the same offence, two classes of vehicle, namely, private and Government, cannot be discriminated. Hence, Section 54-A is invalid and violative of Article 14 of the Constitution. There is no procedure provided for rebuttal; there is no opportunity for leading evidence, there is no opportunity to file reply, and there is no opportunity of being heard, as such, it is violate of settled principles of the Evidence Act. By virtue of amended provisions, punishment of fine was imposed, prior to the trial was completed, and as such, it is violative of Article-21 of the Constitution and it takes away a right. We are unable to countenance the said submission. The amendments made are perfectly valid and they cannot be said to be arbitrary, or against the provisions of the Constitution. The exclusion of jurisdiction is contained in a number of Acts, passed by other States, and the same has been done in the Rajasthan Excise Act. The amended provision cannot be said to be violative of principles of natural justice. The seizure of vehicle in a particular case, is ordered, after hearing the petitioner, on his application, for release of the vehicle. It is to be noticed that under Section 9-A of the Act, appeal against an order of District Excise Officer, is provided before the Excise Commissioner, and the appellate authority is a quasi-judicial authority, and as such, this contention is wrong. The incorporation of Sections 9-A and 9-B, in no way, can be said to be ultravires. The incorporation, in our opinion, has been brought to achieve the object, and its rationale with the object, sought to be achieved. Further, as already noticed, appeal is provided against an order under Section 9-A, and hence, Sections 9-A and 9-B can, in no way, be said to be ultra vires. It is pertinent to notice that the amendment made in the Act, has been made with the simple intention to check smuggling liquor and to give more teeth to the existing law. The confiscation power, conferred on the Excise Commissioner, is in no way, in violation of the provisions of the Constitution. Under the amended provisions, Excise Commissioner, prior to confiscation, would provide due opportunity of hearing to the owner of the vehicle, and then, pass the order. Further, an appeal is also provided against the order of Excise Commissioner. A bare perusal of the different States'' excise laws, shows that the Rajasthan is not the only State, where such provisions exist and they are in existence in other States also. It is also to be noticed that the amended provisions are legal, valid and in accordance with the provisions, conferred by the Constitution, under its List-II of the Seventh Schedule. It is also relevant to mention here that a similar provision does exist in other laws, like Rajasthan Sales Tax Act; Essential Commodities Act; Arms Act, and Indian Forests Act."

16. That after this Court has held that Section 9-A, which is impugned in the instant petition is intravires, to the Constitution, the instant petition assailing vires of Section 9-A does not survive & deserves to be rejected.

17. We are thus not convinced with any of the arguments advanced by counsel for the petitioner, both factual & legal, the remedy to settle scores, if any, with Leeladhar the owner to whom the vehicle has been financed by the petitioner and confiscated by the respondents lies elsewhere.

18. In the light of what we have observed herein before, the instant petition being wholly without substance & devoid of merits, is liable to be dismissed and is accordingly dismissed. No costs.