

(2010) 12 BOM CK 0112
In the Bombay High Court
Case No : Writ Petition No. 837 of 2010

Capt. Lance Irwin Lobo

APPELLANT

Vs

State of Goa and The Excise Commissioner, Government of
Goa

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Citation : (2010) 12 BOM CK 0112

Hon'ble Judges : S.B. Deshmukh, J;F.M. Reis, J

Bench : Division Bench

Advocate : Nigel Da Costa Frias, for the Appellant; V. Rodrigues, A.G.A., for the Respondent

Judgement

S. B. Deshmukh, J.—We have heard learned Counsel appearing for the Petitioner.

2. Rule returnable forthwith.

3. Shri V. Rodrigues, learned Additional Government Advocate waives service for Respondents.

4. By consent of the learned Counsel appearing for the parties, we have heard this Petition finally since short point is involved in the Writ Petition.

5. Learned Counsel appearing for the Petitioner took us through the order passed by the Appellate Authority. The order of the Appellate Authority in Excise Appeal No. 13/2010 at Exhibit J (page 37) is on record. The grievance of the Petitioner is that even though the matter has been remanded by the Appellate Authority, the authority at the first instance i.e. the order passed by the Commissioner of Excise is not set aside. Copy of the order passed by the Commissioner of Excise is also on record. We have seen the order passed by the learned Commissioner of Excise with the assistance of the learned Counsel for the parties.

6. Shri V. Rodrigues, learned Addl. Government Advocate for the Respondents states that the purport of the order passed by the Appellate authority learned

Chief Secretary of this State, virtually has set aside the order passed by the Commissioner of Excise and the matter has been remanded back to the Commissioner of Excise for decision according to the law.

7. The matter has been remanded by the learned Chief Secretary to the Commissioner of Excise. Obviously, the Commissioner of Excise, has to consider the matter in accordance with the provisions of law and after giving an opportunity to the present Petitioner. We have not come to the merits of the issues raised since the matter has been remanded back to the Commissioner of Excise. We are only clarifying that the Commissioner of Excise shall hear the matter in accordance with provisions of law within four weeks.

8. The Writ Petition is partly allowed. Meaning thereof the Commissioner of Excise may decide the matter after being heard to the Petitioner and on merits as well as without being influenced by the judgment of Appellate authority i.e. learned Chief Secretary of State of Goa.

9. Rule made absolute in the above terms. No costs.