(2019) 07 UK CK 0021

In the Uttarakhand High Court

Case No : Special Appeal No. 653 Of 2017

Chandan Singh Bisht APPELLANT

Vs

State Of Uttarakhand And Others RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 11, 11(1)
Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 07 UK CK 0021

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Aditya Singh, C.S. Rawat

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Aditya Singh, learned Advocate for the appellant and Mr. C.S. Rawat, learned Additional Chief Standing Counsel for the State of Uttarakhand, and with their consent this special appeal is disposed of at the stage of admission.

2. This appeal is preferred against the order passed by the learned Single Judge in WPMS No. 1519 of 2019 dated 31.05.2019, dismissing the writ petition. The petitioner was granted a licence to run an Indian made foreign liquor shop at Aliganj Road in Kashipur. It is his case that, because of protests from several residents and nearby shop owners, he was forced to shift the shop to a distance of 900 meters on the very same road; even at this new location for which permission was granted, he was unable to carry on his business; and by letter dated 01.08.2018, he sought to surrender his licence.

3. When proceedings were initiated to recover the said amount from him, the petitioner invoked the jurisdiction of this Court by filing WPMS No. 681 of 2019. However, he choose to withdraw the writ petition with liberty to seek the remedy before the appropriate forum. The Writ Petition was dismissed by order dated

13.03.2019 granting the petitioner liberty to seek remedy before the appropriate forum.

4. The appellant-writ petitioner, thereafter, preferred an appeal to the Commissioner of Excise under Section 11 of the U.P. Excise Act, 1910 along with an application seeking waiver of deposit of 25% of the disputed amount of tax, fee, penalty or other dues. By his order dated 15.04.2019, the Commissioner rejected the request of the petitioner to deposit 25% of the amount; and thereafter, by proceedings on the same date (15.04.2019), rejected the appeal on the ground of non-deposit of 25% of the amount. Consequently, recovery proceedings were initiated against the petitioner by order dated 02.05.2019.

5. Questioning all the three proceedings i.e. rejection of the application for waiver of deposit, the consequential order of rejection of the appeal itself, and the recovery order dated 03.05.2019, the petitioner invoked the jurisdiction of this Court. In the order under appeal, the learned Single Judge observed that the petitioner was allotted a foreign liquor shop by the State Government; he could not operate from the said shop; subsequently, recovery was being made from the petitioner; in the earlier round of litigation against the recovery, the petitioner had filed a writ petition being WPMS No. 681 of 2019, which was dismissed vide order dated 13.03.2019 as the petitioner had a remedy in the form of an appeal under Section 11 of the U.P. Excise Act, 1910; the petitioner had availed the remedy of appeal where the petitioner has been directed to deposit 25 percent of the amount; the petitioner had sought exemption of this amount; and no reasonable grounds have been shown by the petitioner before this Court as to why this amount be exempted. The writ petition was, accordingly, dismissed. Aggrieved thereby, the present appeal.

6. Mr. Aditya Singh, learned Counsel for the appellant-writ petitioner, would contend that the appellate authority (Commissioner, Excise) had erroneously recorded facts in the order passed by him refusing to waive 25% deposit, and had sought to place the blame on the petitioner, though inability of the appellant-writ petitioner, to carry on business at either of the two locations, was because of his being prevented from doing so by other shop owners and residents of the locality; it is not in dispute that the petitioner was unable to carry on business; the respondent-authority had accorded permission for shifting the shop; and, as they were aware that the appellant was not able to carry on business in the new shop also, they were not justified in insisting on deposit of 25%, of the total amount, as a pre-condition for an appeal to be entertained; and the order rejecting the appeal, and the subsequent order of recovery, were passed as a consequence of rejection of the appellant-writ petitioner's application for waiver of the condition of pre-deposit.

7. Section 11(1) relates to appeals and revisions. Under Sub-Section (1) thereof, the Collector, and every other Excise Officer (not being the Excise Commissioner) shall, in respect of all proceedings under this Act, be subject to the control of the Excise Commissioner; and all orders passed by the Collector, or such other officer

under this Act, shall be appealable to the Excise Commissioner in the manner prescribed by rules made by the State Government. Under the first proviso thereto, no appeal shall be entertained under sub-section (1) unless it is preferred by the aggrieved person within thirty days from the date of communication of such order, and unless the appellant has furnished satisfactory proof of having paid a sum of not less than 25 per cent of the disputed amount of tax, fee, penalty or other dues, if any, as the case may be. Under the second proviso, the appellate authority may, for special and adequate reasons to be recorded in writing, waive or relax the requirement of the preceding proviso in respect of such disputed amount of tax, fees, penalty or other dues.

8. While an appeal can be filed under Section 11(1) before the Excise Commissioner, the first proviso prohibits an appeal, under Section 11(1), being entertained, except on fulfilment of the conditions stipulated therein. The conditions are (i) the appeal should be preferred by a person aggrieved; (ii) It should be preferred within 30 days from the date of communication of the order; and (iii) the appellant should have furnished satisfactory proof of having paid a sum, not less than 25 per cent of the disputed amount of tax, fee, penalty or other dues, if any.

9. While no appeal can be entertained under Section 11(1) except on proof of payment of not less than 25% of the disputed amount of tax, fee, penalty or other dues being furnished by the appellant, the Second proviso enables the appellate authority to waive or relax the rigor of the first proviso with respect to the disputed amount of tax, fee penalty or other dues. While the second proviso does not permit the Excise Commissioner to relax the other two requirements of the appeal being preferred by the aggrieved person, and for such an appeal to be preferred within 30 days, the second proviso enables the Commissioner to relax or waive the requirement of deposit of 25%.

10. This discretionary power conferred, by the second proviso on the Commissioner of Excise to waive or relax the requirement of deposit of the disputed amount of 25%, can only be exercised for special and adequate reasons, which should be recorded in writing, before the rigor of the first proviso, i.e. to deposit 25% of the disputed amount of tax, fees, penalty or other dues, can be waived or relaxed. It is not obligatory for the Commissioner, much less as a matter of course, to exercise his power under the second proviso, if he is of the opinion that it should not be exercised. If he does not exercise the power, then the first proviso would apply. It is only if the Commissioner is satisfied that the requirement of 25% deposit, in terms of the first proviso, should be waived or relaxed, would he then, in terms of the second proviso, be obligated to record special and adequate reasons in writing as to why he has considered it appropriate to do so. If the Commissioner chooses not to exercise his discretion, to waive or relax such a requirement, the appellant is then obligated, in terms of the first proviso, to deposit 25% of the disputed amount of tax, fee, penalty, etc.

11. In proceedings, under Article 226 of the Constitution of India, the High Court

would not sit in appeal over the order passed by statutory authorities. It is only if the order is so patently illegal, as to violate Article 14 of the Constitution of India, would interference be justified. Whether discretion should be exercised, to waive or relax the rigor of the first proviso, is for the Commissioner to decide, and not for this Court to direct. As the Commissioner has exercised his discretion and has chosen not to relax or waive the requirement of the first proviso, we see no reason to interfere therewith.

12. While we are satisfied that the order, refusing to waive the requirement of deposit of 25%, does not necessitate interference, we deem it appropriate, in the facts and circumstances of the present case, to give an opportunity to the appellant to make such deposit. In case the appellant deposits the said amount, as required under the first proviso to Section 11(1) of the Excise Act, within three weeks from today, the Commissioner shall entertain the appeal, if need be summon the records relating to the order impugned in the appeal; furnish such relevant documents as the appellant desires to examine, consider the appeal preferred by the appellant-writ petitioner on its merits; and, thereafter, pass a reasoned order in accordance with law. It is only after the appeal is heard and decided would the question whether or not to initiate recovery proceedings arise.

13. Consequently, both the orders rejecting the appeal and the order of recovery are set aside. In case the appellant fails to deposit the stipulated amount, in terms of the first proviso to Section 11(1), within three weeks from today, the orders passed earlier rejecting the appeal for non-deposit, and the subsequent proceedings for recovery, shall revive; and it would be open to the respondents to take action, thereafter, in accordance with law. The special appeal is disposed of accordingly. No costs.

14. Let a certified copy of this order be furnished to the learned counsel for the parties, on payment of the prescribed charges, by 04.07.2019.