

(2016) 02 RAJ CK 0105

In the Rajasthan High Court

Case No : .Civil Writ Petition No. 1670 of 2016.

Chander Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 WLCRajUC 602

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : B.R. Bishnoi, Advocate, for the Appellant; Dr. Sachin Acharya and Shreedhar Mehta, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

Sangeet Lodha, J. - This writ petition is directed against the order dated 9.2.16 passed by the Additional Commissioner, Excise, Jodhpur, whereby the petitioner's vehicle carrying illicit liquor has been ordered to be confiscated and alternatively, the petitioner is directed to deposit the penalty quantified at Rs.2,50,000/- and get the vehicle released.

2. Learned counsel appearing for the petitioner submitted that petitioner is ready to avail the alternative remedy of appeal available under Section 9A of the Rajasthan Excise Act, 1950 (for short "the Act"). It is submitted that the vehicle of the petitioner seized by the respondents is kept in open for a long time then, it is bound to be damaged and therefore, the same may be directed to be released on "supurdaginama". It is further submitted that the appeal to be filed by the petitioner at this stage, shall be barred by limitation and therefore, the appropriate directions may be issued to the Appellate Authority to condone the delay and decide the appeal on merits.

3. Learned counsel appearing for the respondents submitted that as per proviso to sub-section (4) of Section 9A, no appeal can be entertained by the Appellate

Authority unless it is accompanied by satisfactory proof of 75% of the amount of demand created by the order appealed against and therefore, the question of the petitioner's vehicle being released without depositing 75% of the demand created by the order sought to be appealed against, does not arise.

4. Indisputably, the order impugned is appealable under Section 9A of the Act and in the considered opinion of this court, the present petition does not suggest any special feature so as to permit the petitioner to invoke the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India, by passing the remedy of appeal.

5. In view of pendency of this writ petition before this court against the order sought to be appealed against, it is considered appropriate that the petitioner is granted time to file the appeal and the Appellate Authority is directed to decide the appeal on merits.

6. Accordingly, the writ petition is disposed of with the direction that if the petitioner prefers an appeal within a period of 30 days from today, the appeal preferred by the petitioner shall be decided by the Appellate Authority on merits. The vehicle of the petitioner confiscated may be released on "supurdaginama" provided, the petitioner deposits 75% of the demand created by the order sought to be appealed against, within a period of 30 days from today and furnishes solvent surety for the remaining amount. If the petitioner deposits 75% amount of the demand created by the order impugned within the stipulated period, the respondents shall not take any coercive action for recovery of the remaining amount, till the disposal of the appeal by the Appellate Authority. No order as to costs.