**(2005) 12 AP CK 0060**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No''s. 16379 and 16389 of 2005

Chindura Muthaiah and Co. APPELLANT

Vs

Deputy Commissioner of Prohibition and Excise and Others RESPONDENT

**Date of Decision :** 07-12-2005

**Acts Referred:**

Andhra Pradesh Excise Act, 1968 — Section 34, 45, 46, 46(2), 46A
Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation :** (2006) 2 ALD 367 : (2006) 2 ALT 183

**Hon'ble Judges :** G. Rohini, J

**Bench :** Single Bench

**Advocate :** K.M. Mahender Reddy, in WP No. 16379 of 2005 and K. Sarala Mahender Reddy, in WP No. 16389 of 2005, for the Appellant; Government Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

G. Rohini, J.—Since common questions of fact and law arise for consideration, these two writ petitions are heard together and decided by this common order.

2. On 12-10-2003 the Prohibition and Excise Inspector, Mancherial and the Prohibition and Excise Sub-Inspector have seized 60.11 quintals of Black Jaggery while being transported in a van bearing NoMGV AP-25 T-8212 from Karmareddy to M/s. Lakshmi Kirana Merchants, Kataram of Karimnagar District under the cover of panchanama and a case was registered in P.R.No.490/2003-04 u/s 34(e) of The A.P. Excise Act, 1968. In pursuance thereof, the Deputy Commissioner of Prohibition and Excise, Karimnagar having issued show-cause notices to the owner of the vehicle as well as the owner of the jaggery being carried in the vehicle and having considered the explanations offered, by separate orders dated 27-5-2004 and 24-8-2004 confiscated the Black Jaggery and the vehicle respectively u/s 46(2) of the A.P, Excise Act, 1968.

3. The petitioner in W.P. No.16379 of 2005, who claims that the seized Black Jaggery belongs to him, filed an appeal against the order of confiscation dated

27-5-2004 before the Commissioner of Prohibition and Excise, Hyderabad, which was dismissed by order dated 30-6-2005. The said order is used challenge in W.P. No. 16379 of 2005.

4. The petitioner in W.P. No. 16389 of 2005 claims to be the owner of the seized vehicle - AP 25 T/8212 which was confiscated by order dated 24-8-2004. Challenging the order of confiscation, he preferred an appeal before the Commissioner of Prohibition and Excise, Hyderabad, but the same was dismissed by order dated 8-4-2005. The said order is under challenge in W.P. No.l6389 of 2005.

5. I have heard the learned Counsel for the petitioners as well as the learned Government Pleader appearing for the respondents.

6. The learned Counsel for the petitioners contends that the impugned action of the respondents in confiscating the vehicle -as well as the goods is not in conformity with the Circular dated 3-11-2002, issued by the Commissioner of Prohibition and Excise, Hyderabad, under which it was made clear that trade in Jaggery/Black Jaggery which is used for lawful purpose is not prohibited. The learned Counsel submits that the Black Jaggery in question was being transported under valid permits and other necessary documents. He contends that since Black Jaggery is not an intoxicant, absolutely no case is made out to show that the petitioners have committed any offence punishable under the A.P. Excise Act and therefore the impugned orders of confiscation are arbitrary and illegal.

7. It is no longer res Integra that the Black Jaggery as such does not come within the purview of the A.P. Excise Act, 1968. A full Bench of this Court in Ganesh Traders Vs. District Collector, Karimnagar and Others, , having considered the said issue in detail held that the Black Jaggery cannot be treated as ''intoxicant''. Having regard to the above legal position, the Commissioner of Prohibition and Excise, Hyderabad, issued Circular dated 3-11-2002 with a direction to all the Subordinate Officers to follow the instructions as under :

(i) No seizure of black jaggery be made which is being brought by the farmer to the Agricultural Market-yards for sale.

(ii) No seizure of black jaggery be made which is being transported from the Agricultural Market-yards to the premises of the wholesale dealer covered by valid documents and stored in the premises of the wholesale dealer.

(iii) The consignment of the black jaggery be permitted without any restriction, if the same is covered by way bills/permits issued by the Agricultural Market Committee and the invoices are clearly showing the names and addresses of the consignor as well as the consignee.

(iv) Cases of seizure of black jaggery which are pending before the Deputy Commissioner of Prohibition and Excise shall be disposed of by 30th November, 2002. If any trader has filed/filing any application for release of the seized stocks of black jaggery for interim custody, the same should be disposed of within a week by the Deputy Commissioner of Prohibition and Excise concerned.

8. In the said Circular, all the subordinate officers were instructed to conduct proper enquiries in respect of stocks of Black Jaggery which is reasonably believed that it is likely to be used for manufacture of I.D. Liquor and to take appropriate action accordingly.

9. In the instant cases, the allegation was that the vehicle carrying 60.11 quintals of Black Jaggery which was to be transported from Kamareddy to M/s. Lakshmi Kirana Merchants, Kataram of Karimnagar District was found in the limits of Burugupalli Thanda, Jaipur Mandal, Adilabad District. It was alleged that instead of taking to the destination covered under the bills, the consignment was diverted to Burugupalli Thanda which was reported to be notorious for illicit distillation. Hence, a case u/s 34(e) of the A.P. Excise Act, 1968 was registered. Though the petitioners in their explanations denied the allegations and pleaded that the driver of the vehicle had missed the route during night time, the original as well as the appellate authorities concluded that the petitioners were transporting the Black Jaggery to the ID. Distilleries of Burugupalli Thanda and accordingly ordered confiscation of both the vehicles and the Black Jaggery.

10. Section 34 of the A.P. Excise Act 1968, which deals with penalties for illegal import and etc., to the extent it is relevant runs as under :

Whoever in contravention of this Act or any Rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under this Act

(a)...

(b)...

(c)...

(d)...

(e) Uses, keeps, or has in his position any materials, steels, utensils, implements, or apparatus whatsoever for the purpose of manufacturing any intoxicants other than toddy shall on conviction be punished with imprisonment and fine.

(emphasis supplied)

11. u/s 45 of the A.P. Excise Act, 1968 whenever any offence has been committed, which is punishable under the Act, any intoxicant, materials, still, utensil, implements or apparatus in respect of which such offence has been committed shall be liable for confiscation.

12. That apart, u/s 46 of the Act where anything liable for confiscation u/s 45 is seized or detained, the officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the Deputy

 

Commissioner of Prohibition and Excise who has jurisdiction over the area and on such production the Deputy Commissioner of Prohibition and Excise if satisfied that an offence under the Act has been committed, whether or not a prosecution is instituted for the commission of such an offence, order confiscation of such properly. Section 46-A of the Act mandates that before passing order of confiscation, the person from whom the property is seized shall be given a notice in writing informing the grounds on which it is proposed to confiscate such property and is given an opportunity to make a representation in writing within such reasonable time as may be specified in the notice.

13. In the case on hand, it is not in dispute that a notice was served on the petitioners in both the writ petitions calling upon them to show-cause as to why the vehicle and the goods respectively shall not be confiscated. In the show-cause notice, a specific allegation was made that the property as well as the vehicle were involved in violation of provision u/s 34(e) of The A.P. Excise Act, 1968. Having received the said show-cause notice, the petitioners in both the cases submitted their detailed explanations stating that the Black-Jaggery in question was sold on credit to M/s. Lakshmi Kirana Merchants, Kataram of Karimnagar District and it was under transportation with all valid documents. It was also explained that the driver of the vehicle missed the route in the night and since the Black-Jaggery in question was sold and transported with all the valid bills as well as Agricultural Market Permit and Way-bill, no offence as alleged in the show-cause notices has been made out. The Deputy Commissioner of Prohibition and Excise, on verification of the material produced by the petitioner, found that as per the way bill, the consignment of Black-Jaggery was to be transported from Kamareddy to M/s. Lakshmi Kirana Merchants, Kataram of Karimnagar District. However, instead of going to the destination i.e., Kataram of Karimnagar District the vehicle with consignment was diverted to Burugupally Thanda of Mancherial Mandal of Adilabad District. It was also stated that on interrogation, the clerk of the petitioner one Mr. Srinivas disclosed in the Panchanama that he was going to supply Black-jaggery for manufacturing of I.D. Liquor to Burugupalli Thanda which is notorious for illicit distillation. Since the Black-Jaggery is a raw material for manufacture of I.D. Liquor which is injurious to public health, the same was seized along with vehicle and a case was registered u/s 34(e) of the A.P. Excise Act after drawing samples. The Chemical Analysis Report revealed that the Black-Jaggery was containing 78.85% TRS and it was useful for the manufacture of I.D. Liquor vide report dated 17-12-2003. The Sub-Divisional Prohibition and Excise Officer, Mancherial who conducted further investigation has reported vide proceedings dated 21-2-2004 that Burugupalli Thanda was a notorious I.D. center and the Black-Jaggery was being supplied to the I.D. Manufacturers for the purpose of illicit distillation. Accordingly, it was concluded that the explanation offered by the petitioners was not convincing and therefore the Black-Jaggery as well as the vehicle could not be released.

14. At the outset, it is to be noted that the confiscation u/s 46 of the Act can be

 

ordered only where an offence has been committed which is punishable under the Act.

15. The learned Counsel for the petitioner contends that Section 34(e) of the Act can be made applicable only to the manufactures of intoxicant. He submits that in the case on hand absolutely no case was made out to show that the petitioner had indulged in manufacturing of intoxicant, except alleging that the Black-Jaggery was being transported by him for the purpose of supply to the I.D. manufacturers engaged in illicit distillation at Burugupally Thanda. Hence, according to the learned Counsel, no offence u/s 34(e) of the Act has been made out and therefore the order of confiscation is liable to the set aside.

16. It is to be noted that similar question has been considered by this Court in Ulli Bhaskar v. State of A.P. 2004 (1) ALD 561 (AP) : 2004 (1) LS 385, in a petition filed u/s 482 of the Code of Criminal Procedure to quash the criminal proceedings initiated for the alleged offence u/s 34(e) of the A.P. Excise Act, 1968. In the said case, the allegation was that the petitioner therein was in possession of Black-Jaggery and that he confessed in the interrogation that he sold the same for the purpose of illicit distillation of liquor. This Court having considered in detail the scope and object of Section 34(e) of the A.P. Excise Act held that being in possession of Black-Jaggery even with an intention to manufacture illicit liquor, can, by no stretch of imagination, be said to be an offence, because as per the Excise Act an offence u/s 34(e) is committed by a person when he is using the material for the purpose of manufacturing an intoxicant.

17. Having regard to the legal position explained in the said decision, I find force in the submission of the learned Counsel for the petitioner. The ratio laid down in Ulli Bhaskar''s case (supra) squarely applied to the cases on hand, since admittedly the petitioners were only transporting Black-Jaggery, but did not indulge in manufacture of an intoxicant. Merely because the vehicle was found in a different route and the same was intercepted near the village Burugupally Thanda which is notorious ID. center, the respondents cannot presume that the petitioners had indulged in manufacture of an intoxicant within the meaning of Section 34(e) of the Act. Both the respondents 1 and 2 failed to appreciate the said fact in a proper perspective and ordered confiscation mechanically.

18. In the circumstances, following the ratio laid down in Ulli Bhaskar''s case (supra) the impugned orders of confiscation which are not in accordance with law are declared arbitrary and illegal.

19. Accordingly, both the impugned orders are set aside and the writ petitions are allowed. No costs.

 