
(2014) 04 GUJ CK 0129
In the Gujarat High Court

Case No : Special Civil Application Nos. 9089 to 9091, 9100 and 9101 of 2013

Crescent Organics Pvt. Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Bombay Prohibition Act, 1949 — Section 143(1)
Constitution of India, 1950 — Article 19(1)(g), 226
Poisons Act, 1919 — Section 2, 3, 4, 4(1), 4(2)

Citation : (2015) 1 GLR 353

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Mihir Joshi, Senior Advocate, Kunal Nanavati for Nanavati Associates, Advocates for the Appellant; Prakash K. Jani, G.P. and P.P. Banaji, Asstt. G.P, Advocates for the Respondent

Judgement

R.M. Chhaya, J.—All these petitions raise a common question of law and fact and as the issue involved in all the petitions are identical, the same are heard together and are decided by this common judgment and order. By way of this petition under Art. 226 of the Constitution of India, the petitioners have challenged the orders dated 3-4-2013 passed by the District Magistrate under the provisions of the Poisons Act, 1919 (hereinafter referred to as "the Act" for the sake of brevity) read with the Gujarat Poisons (Possession and Sales) Rules, 1963 (hereinafter referred to as "the Rules" for the sake of brevity). The petitioners have also challenged the demand letters dated 16-4-2013 issued by the respondent authorities pursuant to the order passed by the District Magistrate. The petitioners have also prayed for an appropriate writ, order or direction directing the authorities i.e. the District Magistrate to consider the application of the petitioners for grant of licence under the Rules.

2. At the outset, it may be noted that the facts narrated in these petitions are almost identical, and therefore, the facts narrated in Special Civil Application No. 9089 of 2013 are taken as basis of this judgment.

3. The facts which can be culled out from the record of Special Civil Application No. 9089 of 2013 are as under:

3.1. The petitioner is a Company registered under the provisions of the Companies Act, 1956 and is engaged in the business of import and sale of Methanol. The petitioner imports Methanol from Saudi Arabia, South Africa etc. and it sells the same by bond transfer. It is the case of the petitioner that Methanol imported by the petitioner is kept in customs bonded warehouse, and thereafter, sold in wholesale after payment of requisite duties and taxes. The petitioner has further contended that Methanol is Class-A chemical and a petroleum product produced from natural gas by a complex industrial process and that Methanol is primarily an industrial use product and is extensively used in manufacture of several intermediate products like bulk drugs, which is eventually used in manufacturing life saving drugs. It is contended by the petitioner that Methanol is also used in manufacturing of plywood, decorative laminates, dyes, pigments, resins etc. The petitioner has further contended that Methanol being a Class-A chemical, import of the same is permitted at the ports of Mumbai, Kandla, Mangalore, Mundra, Vizag and Cochin. It is the case of the petitioner that Methanol is kept in customs bonded tanks and is not sold in retail or over the counter. It is contended by the petitioner that majority of the demand of Methanol is met by imports and import of Methanol is not restricted by the Central Government under Sec. 3 of the Act. Explaining the procedure and manner in which Methanol is imported, it is contended by the petitioner that the entire process of import and sale is carried out in a secured and efficient manner and that every tonne of Methanol is accounted for. It is contended that even the suitability report is to be obtained and the whole process of loading Methanol into tanks that too, customs bonded warehouse is undertaken. Even after the discharge of Methanol from the vessel, the tanks located on it are once again inspected by the surveyors and report to that effect is prepared. It is further averred that on completion of transfer of Methanol into the tanks at the customs bonded warehouse, it is again inspected by a surveyor who prepares "Store Tank Measurement Data", "Summary of Quantity", "Time Log" and "Analysis Report". It is the say of the petitioner that the said documents certify the quantity and quality of Methanol received at the port which is compared with the surveyor's report at the time of loading of the vessel. It is the say of the petitioner that such a method is adopted to ensure that every metric ton of Methanol is accounted for. It is the say of the petitioner that the purchasers purchased Methanol after completion of necessary bonds and customs formalities. It is the say of the petitioner that the petitioner maintained a daily dispatch register which carries the details of purchasers, tankers, quantity of Methanol dispatched on daily basis. It is the say of the petitioner that such a method is adopted to check tampering, theft or contamination of Methanol. It is the case of the petitioner that shipment of Methanol was received by the petitioner in the month of February, 2013 and the entire quantity of Methanol of the said shipment was sold within the customs bonded warehouse by way of bond transfer. It is the say of

the petitioner that as the whole stock of Methanol is sold within the customs bonded warehouse, the petitioner does not require any licence under the Rules for sale of Methanol as the said goods have not entered the customs frontier of the country. It is the say of the petitioner that during the period from 1-4-2011 to 30-3-2013, the major portion of Methanol imported has been sold by way of bond transfer and a very negligible part of Methanol imported by the petitioner is sold to local industries by the petitioner after payment of customs duty and sales tax on clearing the same from the customs bonded warehouse and it is averred that the local sales by the petitioner is barely 15% of the total Methanol imported by it. The petitioner has further averred that the import and sale of Methanol is governed by the Rules incorporated in exercise of powers conferred under Sec. 143(1) of the Bombay Prohibition Act, 1949 which are known as Gujarat Methyl Alcohol Rules, 1981 and more particularly, Rules 8 and 9 thereof. It is the case of the petitioner that M.A. II licence is a pre-requisite for the sale of Methanol and the petitioner was granted licence under Form M.A. II which is renewed on yearly basis every year and as per the say of the petitioner, the said licence is still subsisting. It is the say of the petitioner that Methanol can be sold only after proper verification of M.A. I and M.A. II licence of all the purchasers.

3.2. It appears from the record that the District Magistrate, Kutch issued a show-cause notice to the petitioner dated 22-3-2013, whereby the District Magistrate called upon the petitioner to show-cause as to why action should not be taken against the petitioner under Sec. 4 of the Act on the allegation that the petitioner has violated Rule 3 of the Rules. The petitioner gave a reply to the said show-cause notice on 28-3-2013 giving all details of import and sale/disposal of Methanol. The record indicates that the petitioner thereafter filed an application for licence before the District Magistrate on 9-4-2011. The record indicates that as the said application was not processed by the respondent-District Magistrate, the petitioner approached the District Magistrate by a communication dated 24-8-2011. The record of the petition further reveals that the petitioner thereafter applied for renewal of the licence granted under the provisions of the Act and the Rules. However, the concerned officer i.e. Prohibition and Excise Officer, Kutch insisted that the petitioner should give an undertaking to the effect that it was subject to and bound by the Rules and the investigation is carried out by them. It is the say of the petitioner that a precondition of the said nature had been raised by the authorities for the first time and only after giving undertaking, the authorities agreed to grant renewal of M.A. II licence. It is further averred that the said undertaking was given by the petitioners under coercion and only with a view to obtain the renewal of M.A. II licence. It is contended by the petitioner that the said undertaking given under coercion is not valid and is not bound by the same. It further appears that the show-cause notice culminated into the impugned order dated 3-4-2013 which was passed by the District Magistrate and pursuant to the said order, the respondents raised a demand of penalty of Rs. 5,93,64,721/- by a communication dated 16-4-2013.

3.3. The petitioners, by way of these petitions under Art. 226 of the Constitution

of India, have therefore, challenged the impugned orders dated 3-4-2013 and further demand raised by letters dated 16-4-2013 on various grounds.

4. The petitioners have inter alia contended that the impugned orders dated 3-4-2013 and the impugned demand letters dated 16-4-2013 are ex-facie, illegal, arbitrary, irrational and violative of Art. 19(1)(g) of the Constitution of India. It is contended that no licence is required in case of the petitioners for Methanol sold by it within customs bonded warehouse. It is contended that as such the said fact is totally ignored by the District Magistrate. It is the case of the petitioners that the entire process of importation, storage and sale of Methanol is carried on with the knowledge of the authorities, and it is, therefore, contended that the penalty imposed in the impugned orders is not in consonance with the facts and circumstances of the case. It is also contended that the District Magistrate has erred in ignoring the fact that the negligible quantity of Methanol is sold by the petitioners to the local industries after payment of customs duty and sales-tax. It is contended by the petitioners that as the petitioners were granted licence under the Rules for sale of Methanol, the petitioners, pursuant to the said licence, undertook the importation and sale of Methanol, and therefore, it cannot be said that the petitioners possess and sold Methanol in violation of the Rules. It is further contended that the impugned orders suffer from total non-application of mind, inasmuch as, in absence of any Rules framed under Sec. 4(2) of the Act, no penalty under Sec. 4(2) of the Act can be imposed. It is contended that it is neither the case, nor is there any apprehension of commission of murder or mischief by poisoning of the cattle in the area of the customs bonded warehouse. It is, therefore, contended that imposition of penalty and confiscation under Sec. 4 of the Act would amount to travelling beyond the scope and power of the provisions of the Act. It is also contended that the District Magistrate has no authority under the law to direct the petitioners to pay the amount of penalty equivalent to the prevalent market rates of the goods confiscated. It is contended that no such penalty is provided under the Act or the Rules. It is contended that the District Magistrate has passed the order of confiscation of goods which have already been disposed of by the petitioners and such goods no longer exist, and therefore, no order of confiscation can be passed against the goods which are not available for confiscation. It is also contended that the impugned orders are passed without giving proper opportunity of being heard to the petitioners. It is further contended that the impugned demand letters dated 16-4-2013 suffer from vice of breach of principles of natural justice as no opportunity is given to the petitioners before raising such a demand.

5. In response to the notice issued by this Court, the State Government has filed reply through District Magistrate, Kutch. It is mainly contended by the respondents as under:

"7. It is most respectfully submitted that as recorded that without licence of substance of Methanol, is used for period between 1-4-2011 to 30-4-2013, and

therefore, petitioner's Company is ordered by 5 per cent mark follow as in order dated 3-4-2013. That the 5% quantity of Methanol was ordered to be confiscated, and therefore, it is not an order of recovery reference however, the same is ordered allow with 5% quantity of one year average Methanol which is possession/sale between 1-4-2011 to 30-4-2013. Therefore, the authorities orders well within its jurisdiction to find such order.

8. It is most respectfully submitted that power provided under Sec. 2, "power of the State Government to regulate possession for sale of any poison," under Poisons Act, 1919. The under Sec. 2, I have crave leave of Poisons Act as under. Copy of the said Act is annexed herewith and marked as ANNEXURE-R-I.

9. It is most respectfully submitted that exercising power under Sec. 2 of the Poisons Act, 1919, State Government has framed Rules called Gujarat Poisons (Possession and Sales) Rules, 1963 and as per Rule 3 for the item mentioned in Schedule, licence is required to be taken and District Magistrate is empowered to give the licence. Copy of the said Rules annexed herewith and marked as ANNEXURE-R-II.

The Schedule internal page 3 of the Rules the substances Methanol, and therefore, the Company dealing with this is required to take licence and petitioner also applied for licence for keeping Methanol substance for temporary possession, by application dated 9-4-2011. Copy of the said application is annexed herewith and marked as ANNEXURE-R-III.

10. It is most respectfully submitted that, before granting of this application, petitioner was not required to possess or sale substance of Methanol and before granting the licence. The petitioner has possess/sale substance of Methanol period between 1-4-2011 to 30-4-2013, and therefore, order passed by the District Magistrate, Kutch. Copy of the letter dated 9-4-2011 and copy of the report supplied from Mamlatdar are annexed herewith and marked as ANNEXURE-R-IV collectively.

11. It is most respectfully submitted that, contended by the petitioners that, in custom bonded area, therefore, no requirement to take licence under the Gujarat Poisons (Possession and Sales) Rules, 1963. Wherein, provision of Rule 3 is prohibition of sale or possession of poison without a licence, and petitioner has applied for the licence by the letter dated 9-4-2011.

12. I say that no penalty is imposed more than Rs. 1,000/- and petitioner completed his order to by 5% confiscate mark of substance of Methanol used, possess and sale period between 1-4-2011 to 30-4-2013.

13. It is most respectfully submitted that the contentions raised by the petitioner that the petitioner is not required to take licence in the custom bonded area. In the present application, I would like to refer Sec. 3 of Poisons Act, which is reproduced as under:

"3. Power to prohibit importation into India of any poison except under licence:

The (Central Government) may, by notification in the Official Gazette, prohibit, except under and in accordance with the conditions of a licence, the importation into India (across any customs frontier defined by the Central Government of any specified poison, and may by rule regulate the grant of licences."

14. It is most respectfully submitted that the Section was applicable that as recorded in Para 3, Page 2 of impugned order dated 3-4-2013, in the present case shows that undertaken is issued by Central Government, and therefore, the petitioner is not exempted taking licence."

6. As against this, the petitioners have filed rejoinder and have denied the contentions raised by the respondents.

7. Heard Mr. Mihir Joshi, learned Senior Advocate with Mr. Kunal Nanavati, learned Advocate for Nanavati Associates for the petitioners and Mr. P.K. Jani, learned Government Pleader with Mr. P.P. Banaji, learned A.G.P. for the State Government. The parties were also permitted to tender their written submissions.

8. Mr. Mihir Joshi, learned Senior Advocate for the petitioners has raised the following contentions which are exhaustively enumerated in the written submissions as under:

8.1. The District Magistrate has no power to pass the impugned orders under Sec. 4 of the Act, inasmuch as, penalty under Sec. 4(2) of the Act can only be levied on breach of the Rules framed under Sec. 4(1) of the Act. It is argued that as there are no Rules framed under Rule 4 and under Sec. 4(1) of the Act, the impugned orders are bad and illegal.

8.2. It is contended that the Rules under Secs. 2 and 4 of the Act operate separately and in different fields. It is contended that the Executive Magistrate has imposed penalty under Sec. 4(2) of the Act for breach of the Rules framed under Sec. 2 of the Act which is not permissible. It is contended that the penalty under Sec. 4(2) of the Act can be imposed only for the breach of the Rules formulated under Sec. 4(1) of the Act which are admittedly not framed.

8.3. It is further contended that even if it is presumed that the Rules framed under Sec. 2 of the Act applies to the present case, the District Magistrate is not authorized to confiscate the goods as neither the Act, nor the Rules permit confiscation of goods, and therefore, the impugned order of confiscating the goods and imposing penalty is illegal.

8.4. It is contended that Methanol imported by the petitioners is kept in customs bonded warehouse and the same is not cleared by the petitioners. It is contended that the third party purchasers purchase Methanol within customs bonded warehouse, and thereafter, it is cleared by the purchasers from the customs bonded warehouse on payment of applicable customs duty and sales-tax. It is submitted that Methanol imported is stored and subsequently sold by the petitioners from within the customs bonded warehouse, which does not fall within the territories of the State Government, and therefore, the provisions of

Sec. 2 of the Act would not be applicable. It is further contended as decided by the Apex Court in the case of *Indian Tourist Development Corporation Ltd. v. Assistant Commissioner of Commercial Taxes*, reported in 2012 (3) SCC 204, the goods kept in bonded warehouses cannot be said to have crossed the custom frontiers and are deemed to have been kept outside the custom frontiers of the country. It is contended that only when the goods enter the territories under the administration of the State Government is entitled to formulate the Rules under Sec. 2 of the Act.

8.5. It is also contended that the petitioners were operating under M.A. II licence granted to it under the Gujarat Methyl Alcohol Rules, 1981 and the petitioners have sold Methanol only to those entities which possess the relevant licence under the said Rules, whereas the Rules framed under the provisions of the Act deals with possession and sale of Scheduled Poisons. It is also contended that the petitioners possess the licence under the Gujarat Methyl Alcohol Rules, 1981 which is lastly renewed upto 31-3-2014. It is, therefore, contended that the impugned order of imposing penalty and confiscating the goods by invoking the provisions of the Act and the Rules is, therefore, illegal. The petitioners have also relied upon the judgment of the Apex Court in the case of *Krishi Upaj Mandi Samiti, Narsinghpur Vs. Shiv Shakti Khansari Udyog and Others*, .

8.6. It is also contended that any action taken by the State Government under Sec. 4 of the Act is to be in accordance with the Rules framed under Sec. 4(1) of the Act and the State Government cannot be permitted to circumvent the provisions of Sec. 4(1) of the Act and levy penalty under Sec. 4(2) of the Act, especially when the basis of the levy of the penalty is absent.

8.7. It is also contended that the provisions of Sec. 4 of the Act would not be attracted in the instant case as the same deals with incidences where the poison has been used for the purpose of committing murder or mischief by poisoning cattle and where such occurrences are frequent. It is not the case of the respondents that Methanol imported by the petitioners has been used in committing murder or mischief by poisoning cattle.

8.8. It is contended that the District Magistrate could not have levied penalty which is not contemplated by law for the time being in force.

8.9. It is also contended that the District Magistrate could not have passed the impugned orders calling for confiscation of goods which do not exist. It is contended that the confiscation of Methanol stored by the petitioners during the relevant period does not exist as it had been sold to the third party purchasers and the same has been cleared by them, and thus, the District Magistrate could not have ordered confiscation of the said goods as the same no longer exists with the petitioners. The petitioners have also relied upon the following judgments to buttress the said contention:

(i) *Commissioner of Customs, Bangalore Vs. G.M. Exports*, .

(ii) Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd., reported in 2008 (229) ELT 85 (P & H).

(iii) G.M. Exports v. Commr. of Customs, Bangalore, reported in 2008 (226) ELT 571 (Tri.-Bang.), (iv) Ram Knazana Electronic v. Commissioner of Customs, Air Cargo, Jaipur, reported in 2003 (156) ELT 122 (Tri.-Del.)

8.10. It is also pointed out that the petitioners have already applied for licence under Gujarat Poisons (Possession and Sales) Rules, 1963. However, the same is kept pending by the District Magistrate being the licensing authority even though reminders have been sent by the petitioners. It is lastly contended that the impugned orders dated 3-4-2013 passed by the District Magistrate are without jurisdiction. It is also contended that the impugned demand letters dated 16-4-2013 are issued based upon the said order which is illegal and the same deserves to be quashed and set aside. It is further contended that the demand letters dated 16-4-2013 are raised without giving any opportunity or notice to the petitioners, and therefore, the same deserves to be quashed and set aside. Mr. Joshi therefore, submitted that the petition may be allowed as prayed for.

9. Per contra, Mr. Prakash Jani, learned Government Pleader for the respondents supported the impugned orders dated 3-4-2013 as well as the demand letters dated 16-4-2013 and has relied upon the affidavit-in-reply filed by the respondents. It is contended that a valid licence for a bona fide transportation and/or sale of certain poisons, as specified, is a necessary condition precedent for the State to ensure and protect. It is further contended that if the substance like Methanol is misused, it may lead to disastrous results as it is known factor that Methanol is used for making spurious liquor, especially in a State where prohibition is in force. It is, therefore, contended that it is necessary that punitive and preventive steps are taken by the concerned authorities. It is contended that the impugned orders are passed under Sec. 4(2) of the Act. However, it is candidly admitted that no Rules till date are framed under Sec. 4 of the Act. It is, however, contended that the District Magistrate can in the interest of the welfare of the State (and its revenue) is empowered to pass such an order considering the fact that a poisonous substance was admittedly sold/transported without a valid licence and can for that purpose confiscate the poison. It is further submitted that even if it is presumed that no order can be passed under Sec. 4 of the Act, then, the same would fall under Sec. 6 of the Act which provides for "Penalty for unlawful importation etc." for inter alia committing breach of any Rule made under Sec. 2 of the Act. It is, therefore, contended that the Statute does provide for confiscation and hence, the same can be resorted to by the authority which is entrusted with the task of giving/issuing licences, and therefore, it cannot be said that the action taken by the District Magistrate is without authority of law. It is further pointed out that in the instant case, instead of confiscating the entire stock and recovering the amount equal to the stock, only 5 % of the total stock is sought to be confiscated and the said amount comes to approximately Rs. 6 crores. It is, therefore, contended that the District

Magistrate has rightly exercised its powers and has passed the proper order of confiscation. It is, therefore, submitted that the same does not require any interference by this Court in its extraordinary jurisdiction under Art. 226 of the Constitution of India.

10. No other or further submissions are made by the learned Counsel appearing for the respective parties.

11. On perusal of the impugned orders dated 3-4-2013 and more particularly, the operative part of it clearly bears out that for the alleged breach of the provisions of Sec. 2 of the Act as well as Rule 3 of the Rules, considering the provisions of Sec. 4(2) of the Act, the penalty is imposed. The operative order further recites that 5% of the average stock for one year is also confiscated and accordingly, the impugned demand is raised by letters dated 16-4-2013.

12. Before reverting to the submissions made by the learned Counsel appearing for the respective parties, it would be appropriate to refer to the relevant provisions of the Act, which read as under:

"2. Power of the State Government to regulate possession for sale and sale of any poison:

(1) The State Government may by Rule regulate within the whole or any part of the territories under its administration the possession for the sale and the sale, whether wholesale or retail, of any specified poison.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the grant of licences to possess any specified poison for sale, wholesale or retail, and the fixing of the fee (if any) to be charged for such licences;

(b) the classes of persons to whom alone such licences may be granted;

(c) the classes of persons to whom alone any such poison may be sold;

(d) the maximum quantity of any such poison which may be sold to any one person;

(e) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers, and the inspection of the same;

(f) the safe custody of such poisons and the labelling of the vessels, packages or coverings in which any such poison is sold or possessed for sale; and

(g) the inspection and examination of any such poison when possessed for sale by any such vendor.

3. Power to prohibit importation into India of any poison except under licence:

The Central Government may, by notification in the Official Gazette, prohibit, except under and in accordance with the conditions of a licence, the importation

into India across any customs frontier defined by the Central Government of any specified poison, and may by rule regulate the grant of licences.

4. Power to regulate possession of any poison in certain areas:

(1) The State Government may by rule regulate the possession of any specified poison in any local area in which the use of such poison for the purpose of committing murder or mischief by poisoning cattle appears to it to be of such frequent occurrence as to render restrictions on the possession thereof desirable.

(2) In making any Rule under sub-sec. (1), the State Government may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, together with confiscation of the poison in respect of which the breach has been committed, and of the vessels, packages or coverings in which the same is found.

5. *** **

6. Penalty for unlawful importation, etc.

(1) Whoever-

(a) commits a breach of any Rule made under Sec. 2, or

(b) imports without a licence into India across a customs frontier defined by the Central Government any poison the importation of which is for the time being restricted under Sec. 3, or

(c) breaks any condition of a licence for the poison granted to him under Sec. 3, shall be punishable,-

(i) on a first conviction, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and

(ii) on a second or subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any poison in respect of which an offence has been committed under this Section, together with the vessels, packages or coverings in which the same is found, shall be liable to confiscation."

13. At this juncture, it would be appropriate to refer to the relevant provisions of the Rules, which read as under:

"No. 705. In exercise of the powers conferred by Sec. 2 of the Poisons Act, 1919 (XII of 1919) and in supersession of the notification specified below, the Governor in Council is pleased to make the following Rules for regulating the possession for sale and the sale of poisons within the whole of the Presidency of Bombay, namely:

Government Notification, Judicial Department, No. 6090 dated the 26th July 1919, Government Notification, Judicial Department No. 6092 dated the 26th July, 1919. Government Notification, Judicial Department, No. 6091, dated the 26th July, 1919.

I-A. Short title, extent and commencement.

(1) These Rules may be called the Gujarat Poisons (Possession and Sales) Rules, 1963.

(2) They extend to the whole of the State of Gujarat.

(3) *** **

1. *** **

2. *** **

3. Prohibition of sale or possession of poison without a licence:

No persons, unless exempted under the provisions of the Act, shall sell or possess for sale any poison specified in Rule 2, except under a licence granted in that behalf--

(1) in the area under the jurisdiction of the Commissioner of Police, Ahmedabad by the Commissioner of Police Ahmedabad.

(2) elsewhere by the District Magistrate, concerned."

14. On perusal of the show-cause notice dated 22-3-2013, it is clear that the petitioners were asked to show-cause as to why actions may not be taken against the petitioners under Sec. 2 of the Act and for breach of Rule 3 of the Rules. The show-cause notice further recites that why action should not be taken under Sec. 4 of the Act asking the petitioners to give written explanation by 28-3-2013 and to remain present on the said date. The allegation in the show-cause notice is based on the basic fact that the petitioners have stored Methanol without obtaining any licence as provided under the Act and the Rules. The impugned orders passed by the District Magistrate also mention the same thing which is mentioned in the show-cause notice. After considering the reply filed by the petitioners, it is observed by the District Magistrate in the impugned orders that the petitioners have tendered an application dated 9-4-2011 for licence. However, the licence is not obtained. It is held that the petitioners have stored/sold poison Methanol without licence by committing breach of Sec. 2 of the Act and Rule 3 of the Rules, and therefore, it is held that it is necessary to take action under Sec. 4 of the Act against the petitioners. In the operative part of the impugned orders, after referring to Sec. 2 of the Act and Rule 3 of the Rules, the District Magistrate has imposed penalty of Rs. 1,000/- under Sec. 4(2) of the Act and has further confiscated 5 % of the stock of one year ranging from 1-4-2011 to 31-3-2013 and has also directed the petitioners to pay equivalent amount of the prevailing market rate.

15. Section 2 of the Act prescribes for "power of the State Government to regulate possession for sale and sale of any poison". Sub-section (2) of Sec. 2 of the Act provides for specific powers of the State Government as regards provision of licence, classes of persons to whom alone such licences may be granted, the classes of persons to whom alone any such poison may be sold, the maximum quantity of any such poison which may be sold to any one person, and other provisions like maintenance of register of sales, inspection of the registers, safe custody and power of inspection and examination of such poison are provided for. Rule 3 of the Rules provides for "prohibition of sale or possession of poison without a licence".

16. Similarly, Sec. 4 of the Act provides for "power to regulate possession of any poison in certain areas". Sub-section (2) in particular provides that while regulating the possession of any poison in areas as envisaged under sub-sec. (1) of Sec. 4 of the Act, the State Government may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, together with confiscation of poison in respect of which the breach has been committed. The bare reading of Sec. 4 of the Act, therefore, would mean that there should be existence of Rule as provided under sub-sec. (2) of Sec. 4 of the Act. The power under Sec. 4 of the Act to regulate possession of any specified poison in certain area is also further qualified as far as the use of such poison for the purpose of committing murder or mischief by poisoning cattle with a further provision that such frequent occurrence as to render restrictions on the possession thereof desirable. It, therefore, transpires that Sec. 4 of the Act is a special provision to regulate possession of any poison which is found to be used for the purpose of committing murder or mischief by poisoning cattle. Therefore, for imposition of penalty, the eventuality which is provided for in sub-sec. (1) of Sec. 4 of the Act has to exist. In addition to this, the Government has to make Rules under sub-sec. (2) relating to the actions which the Government envisages to take under sub-sec. (i) of Sec. 4 of the Act. In facts of the case on hand, it is not the allegation or case of the State Government that the poison is used by the petitioners for committing murder or mischief by poisoning cattle. As observed hereinabove, there are no Rules as such framed under sub-sec. (2) of Sec. 4 of the Act, and therefore, the show-cause notice as well as the impugned orders, as far as the action under Sec. 4 of the Act is concerned, are not only misplaced but are without any authority. Sections 2 and 4 of the Act thus operate in two different fields. In the instant case, no allegation is put forward by the District Magistrate which would entail any further inquiry or order under Sec. 4 of the Act. Moreover, under sub-sec. (2) of Sec. 4 of the Act, the District Magistrate is not empowered to invoke Sec. 4 of the Act and pass an order under Sec. 4(2) of the Act in absence of any Rules for the alleged breach of Sec. 2 of the Act.

17. The petitioners have rightly relied upon the judgment of the Apex Court in the case of Indian Tourist Development Corporation Ltd. (supra) and as the goods are kept in bonded warehouse, it cannot be said that the goods have

crossed the custom frontier and are deemed to have been kept outside the customs frontier of the country. However, as the orders have been quashed and set aside on the foregoing grounds, it is not necessary to further deal with the said aspect.

18. On examining of the reasons for which the show-cause notice came to be issued to the petitioners, the District Magistrate was not empowered to take any action against the petitioners under Sec. 4 of the Act and more particularly, under Sec. 4(2) of the Act. Section 2 of the Act read with Rule 3 of the Rules operate totally in a different field. It is no doubt true that the Rules are framed under Sec. 2 of the Act, and therefore, if any breach of Sec. 2 or the Rules is found, penalty can be imposed under Sec. 6 of the Act for which the State Government and its authorities have to resort to the proceedings as envisaged under Sec. 6 of the Act. Section 6 of the Act envisages "penalty for unlawful importation etc." for committing breach of any Rule made under Sec. 2 of the Act. However, in the instant case, the show-cause notice came to be issued as noted hereinabove for breach of Rule 3, which is framed under Sec. 2 of the Act. However, in the operative part of the order, the District Magistrate has assumed power under Sec. 4 of the Act without there being any Rule to impose Rs. 1,000/- as penalty and to make an order of confiscation.

19. In light of the aforesaid therefore, the show-cause notice itself is bad including the subsequent proceedings and more particularly, imposition of penalty under Sec. 4(2) of the Act and the further order of confiscation is without any authority and jurisdiction. In the written submissions made for and on behalf of the respondents, it is contended that the act of the petitioners could well be said to fall under the provisions of Sec. 6 of the Act which separately provides for penalty for unlawful importation for breach of any Rule made under Sec. 2 of the Act. However, such powers can be exercised after following the procedure as envisaged under Sec. 6 of the Act and after the conviction is recorded and not by resorting to a show-cause notice followed by an order of penalty and confiscation that too, of the goods which are already disposed of by the petitioners. The power of the District Magistrate to issue licence under Sec. 2 of the Act read with Rule 3 of the Rules is altogether a different power and only because of such power, the District Magistrate is not authorized to take action under Sec. 2 of the Act read with Rule 3 of the Rules as no such provision exists. In case if it is found that there is breach of any Rule made under Rule 2 of the Rules, Sec. 6 of the Act would apply for which a proper procedure is required to be followed. The argument put forward by the respondents that the order of confiscation to the tune of 5% of the value of the goods of two years is in larger interest of the State cannot be upheld when the powers are exercised by the District Magistrate which are not vested in it. The District Magistrate cannot be permitted to exercise the powers which are not possessed by it. The show-cause notice is also bad on the count that no eventuality has arisen as envisaged under Sec. 4 of the Act. Section 2 of the Act and the Rules made under it, more particularly, Rule 3 operates in totally different sphere, and therefore, the very initiation of the

proceedings by the show-cause notice and the impugned orders is non-est, void ab-initio and without jurisdiction. An authority is authorized to take action only if the Statute or the Rule empowers it to act. An authority which is otherwise given power under a particular Section cannot travel beyond it. In addition to this, it is an admitted position that in absence of any Rules made under sub-sec. (2) of Sec. 4 of the Act, no action can be taken under Sec. 4 of the Act. In facts and circumstances arising in these petitions, therefore, the District Magistrate has assumed powers which are not possessed by him. The very action of the District Magistrate resorting to assume power under Sec. 4 of the Act and imposition of penalty under sub-sec. (2) of Sec. 4 of the Act and further order of confiscation is thus beyond his jurisdiction and consequently, all proceedings pursuant to the show-cause notice and the impugned orders are, therefore, misdirected, without jurisdiction and are passed in exercise of powers which are not provided for in the Act and the Rules.

20. For the foregoing reasons, the impugned orders dated 3-4-2013 are liable to be quashed and set aside as the same are passed without any authority under the law and the same are without jurisdiction. Accordingly, the impugned orders dated 3-4-2013 are hereby quashed and set aside. Consequently, the demand letters dated 16-4-2013 are also hereby quashed and set aside. The District Magistrate shall consider the application for licence filed by the petitioners in accordance with law.

21. In light of the aforesaid observations and as the impugned orders are quashed and set aside on the aforesaid grounds, this Court has not dealt with the judgments cited by the learned Counsel for the petitioners as regards confiscation of the goods including the judgment rendered in the case of *Krishi Upaj Mandi Samiti Narsinghpur* (supra).

22. It is, however, clarified that this Court has not expressed any opinion on the jurisdiction and power of the State Government to resort to any proceedings under Sec. 6 of the Act. Resultantly, the petitions are allowed. Rule is made absolute accordingly. Interim relief, if any, granted earlier stands vacated forthwith. In facts and circumstances of the case, there shall be no order as to costs.