(2000) 12 KL CK 0049

In the High Court Of Kerala

Case No : O.P. No. 28299 of 2000

Joseph Francis APPELLANT

Vs

Commissioner of Excise RESPONDENT

Date of Decision : 12-12-2000

Acts Referred:

Kerala Abkari Shops (Disposal in Auction) Rules, 1974 — Rule 6(22)
Kerala Foreign Liquor Rules, 1953 — Rule 19

Citation : (2001) 2 KLJ 256

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : C.C. Thomas, for the Appellant; N. Reghuraj, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

R. Bhaskaran, J.—This Original Petition is filed challenging Ext. P3 order of the Commissioner of Excise. Petitioner is a FL-3 licensee. He is aged 65 and due to his old age he decided to form a partnership for the efficient conduct of the bar hotel. He submitted an application for transfer of the license in favour of the partnership. Since it was not considered this Court in O.P. No. 1328/2000 directed disposal of his representation. Thereafter, Ext. P3 order was passed. As per R.19 of the Foreign Liquor Rules and R.6(22) of the Abkari Shops (Disposal in Auction) Rules, the licensee shall not without the written consent of the Assistant Excise Commissioner concerned sell or otherwise transfer his contract or licence. It was for this reason that previous permission was asked for by the petitioner. The first respondent relied on the Full Bench decision in Narayanan & Co. v. Commissioner of Income Tax (1996 (1) KLT 546)

2. Learned counsel for petitioner on the other hand relies on Ext. P4 judgment in O.P. No. 5427/1998. In that case, the Board of Revenue was directed to entertain the petitioner''s application for transfer and grant the same within a period of two weeks from the date of the judgment.

3. Learned Government Pleader mainly relied on certain paragraphs in the Full Bench judgment in Narayanan & Co. v. Commissioner of Income Tax (1996 (1) KLT 546) In that case, the question arose whether forming a partnership by an abkari licensee and exploiting the licence amounts transfer of licence for making the business of the firm illegal. That was a case where previous permission of the Excise Commissioner was not asked for and without the previous permission the partnership was formed. The Full Bench found that such a partnership is illegal and opposed to the provisions of the Abkari Act and the Abkari Shops (Disposal in Auction) Rules. That decision has no application in this case because this a case where the petitioner has prayed for previous permission and there is provision for grant of previous permission both under R.6(22) of the Abkari Shops (Disposal in Auction) Rules and R.19 of the Foreign Liquor Rules. Therefore, the first respondent was bound to consider whether there is any other legal impediment for granting previous permission as per R.6(22) mentioned above. A reading of R.6(22) itself shows that with the written consent of the Assistant Excise Commissioner concerned, the licensee is entitled to sell or otherwise transfer his contract. The Full Bench was considering a question whether without the previous permission a licensee can form a partnership and claim the income tax benefit. In view of the fact that the first respondent did not consider the case in the proper perspective, I quash Ext. P3 and direct the question to be reconsidered in the light of the observations contained in this judgment. First respondent shall pass fresh orders within one month from the date of receipt of a copy of this judgment.

4. The Original Petition is allowed as above.

