

(2011) 11 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25151 of 2007

Kuppili Ravi Kumar Rao

APPELLANT

Vs

Commissioner of Prohibition and Excise, A.P., M.J. Road,
Hyderabad, The Deputy Commissioner of Prohibition and
Excise, Srikakulam District and Inspector of Prohibition and
Excise, Srikakulam District

RESPONDENT

Date of Decision : 07-11-2011

Acts Referred:

Andhra Pradesh Excise (Transportation of Maximum Quantity of Intoxicants) Rules,
1972 — Rule 3

Andhra Pradesh Excise Act, 1968 — Section 34, 45, 46, 46(1), 46(2)

Citation : (2012) 1 ALT 575

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : K. Manik Prabhu, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Sri Justice R. Subhash Reddy

1. The petitioner is the owner of a Tata Sumo Vehicle bearing Registration No. AP-30T-7588. In this writ petition, he has questioned the order of confiscation, dated 05.09.2007, passed by the 2nd respondent-Deputy Commissioner of Prohibition and Excise, Srikakulam, in ROC. No. 309/2006, and the further order of the appellate authority, dated 07.11.2007, issued in ROC. No. 14756/2006/CPE/D-4.

2. The brief facts of the case are that on 01.07.2006, on the allegation that the petitioner was illegally transporting 274 Nips (180 ml) bottles of Madras Malt Whisky in the Tata Sumo vehicle bearing No. AP-30T-7588, the Sub-Inspector of Police, Kanchili, has seized the goods along with the vehicle and registered a case in Crime No. 53 of 2006 u/s 34(a) of the Andhra Pradesh Excise Act, 1968 (for short "the Act). Thereafter, the said case was transferred to the Prohibition

and Excise Station, Sompeta, along with the case property, for further investigation and prosecution and a case in P.R. No. 72/2006-07 was registered u/s 34(a) read with 45 of the Act. Subsequently, the Station House Officer, Prohibition & Excise Station, Sompeta, has submitted a report before the Deputy Commissioner of Prohibition and Excise, Srikakulam, for initiating confiscation proceedings, pursuant to which, a show cause notice was issued to the petitioner on 03.08.2006 calling upon him to show cause as to why the seized goods and the vehicle of the petitioner should not be confiscated u/s 46 of the Act. The petitioner has filed a detailed explanation to the said show cause notice on 25.08.2006 before the Deputy Commissioner of Prohibition and Excise and a copy of the explanation is also placed before this Court.

3. In his explanation, while denying the allegation that the liquor was seized from his vehicle, the petitioner has pleaded that the said vehicle was taken away from his house and that the vehicle did not carry any illegal contraband, but a false case was foisted against him.

4. The primary authority, i.e., the Deputy Commissioner of Prohibition and Excise, Srikakulam, after considering the explanation offered by the petitioner, by order dated 05.09.2006, issued in Proceedings ROC. No. 309/2006, has ordered for confiscation of the vehicle and the goods seized, on the ground that the explanation offered by the petitioner was not satisfactory. The petitioner carried the matter in appeal before the Commissioner of Prohibition and Excise, Hyderabad. Even though in the grounds of appeal put-forth before the appellate authority, the petitioner has specifically pleaded that the vehicle was taken away from his house and that it was not used for illicit transportation of liquor, but the appellate authority has confirmed the order of the primary authority, observing that the petitioner himself is arrayed as accused in the crime and that he has not adduced any evidence to disprove his involvement in the said crime. Hence, the present writ petition.

5. In the affidavit filed in support of the writ petition, the petitioner has stated that he is an educated un-employed and he purchased the vehicle in question, by borrowing huge loans. It is further stated that he has been using the said vehicle as a maxi cab as per the permission granted by the transport authorities. He also pleaded that the vehicle was not used for any illegal purpose, much less, for illicit transportation of liquor, as alleged.

6. While denying the allegations made by the petitioner, a counter affidavit has been filed by the 2nd respondent-Deputy Commissioner" of Prohibition and Excise, Srikakulam, stating that the authorities have seized the vehicle in question while it was found transporting the case property without valid permit. It is further stated that as per Rule 3 of the Andhra Pradesh Excise (Transportation of Maximum Quantity of Intoxicants) Rules, 1972, no Indian Made Liquor shall be transported in excess of six quarter bottles (4.5 ltrs.), except under a permit, and in the instant case, since the petitioner was found to be transporting 49.32 ltrs. of liquor, which is more than the permissible limit, the

same is in violation of Section 34(a) of the Act.

7. Heard learned counsel appearing for petitioner and the learned Government Pleader for Prohibition and Excise, appearing for respondents.

8. Sri K. Manik Prabhu, learned counsel for petitioner, contended that the primary authority, without considering the explanation offered by the petitioner, has passed the order of confiscation, which was confirmed in appeal by the appellate authority, in a routine manner. He further submitted that though the petitioner specifically pleaded that the vehicle was taken away from his house, without taking the same into consideration, the respondents have foisted a false case against him. In his connection, he placed on record, a copy of the judgment of the learned Additional Judicial First Class Magistrate, Sompeta, rendered in C.C No. 439 of 2007, dated 12.02.2008, wherein the petitioner was prosecuted for the offences under Sections 34(a) and 45 of the A.P. Excise Act. He further submitted that in the said judgment, the learned Magistrate, while disbelieving the evidence adduced on behalf of the prosecution, has recorded a specific finding that the seizure was not proved, and on that ground, he acquitted the accused. Hence, he prayed for setting aside the orders of both the primary as well as the appellate authorities.

9. On the other hand, learned Government Pleader for Prohibition and Excise, appearing for respondents, has submitted that in the instant case, the owner of the vehicle himself was prosecuted for the alleged offences and he was also arrayed as Accused No. 1 in the crime, and in that view of the matter, it cannot be said that the vehicle was not used for illegal transportation of liquor.

10. The confiscation proceedings are covered by Sections 45 and 46 of the A.P. Excise Act. Section 45 deals with the things, which are liable for confiscation; whereas Section 46 deals with the power of authorities to order for confiscation. u/s 46(1) of the Act, if anything which is liable for confiscation u/s 45 is seized or detained under the provisions of the Act, 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. u/s 46(2) of the Act, on production of the property seized u/s 46(1), the Deputy Commissioner of Prohibition and Excise, if satisfied that an offence under this Act has been committed, may, whether or not a prosecution is instituted for commission of such offence, order for confiscation of such property.

11. A perusal of the aforesaid provisions would make it clear that recording of a finding with regard to committing of an offence under the Act is a sine qua non to pass an order of confiscation u/s 46(2) of the Act. Further, in the detailed explanation offered by the petitioner to the show cause notice, when he has taken a specific plea that the vehicle was seized from his house, it was obligatory on the part of the Deputy Commissioner of Prohibition and Excise, who is empowered to order for confiscation of property, to record a finding with regard to his satisfaction of the petitioner committing an offence and also with regard to

the explanation offered by the petitioner. In this case, in spite of detailed explanation offered by the petitioner, the Deputy Commissioner, of Prohibition and Excise has passed the order of confiscation by merely stating that the explanation offered by the petitioner is not satisfactory. Even though the Act provides for a right of appeal against the order of confiscation to the Commissioner of Prohibition and Excise, even the appellate authority did not advert to the contents of the explanation offered by the petitioner and he merely confirmed the order of confiscation on the ground that the petitioner himself is arrayed as accused in the crime. The appellate authority also observed that the petitioner has not adduced any evidence to disprove his involvement in the case. When the very allegation against the petitioner is that he had indulged in illegal transportation of liquor, it is obligatory on the part of respondent-authorities to discharge their burden of proving that the petitioner has committed an offence under the Act.

12. It is also to be noticed that with reference to the very same offence, the petitioner was prosecuted in C.C. No. 439 of 2007 by the learned Additional Judicial First Class Magistrate, Sompeta and in the aforesaid case, the Sub-Inspector of Police, who is alleged to have seized the vehicle, was also examined and documentary evidence under Exs.P1 to P4 were marked. Ex.P1 is the occurrence report, dated 01.07.2008. The learned Magistrate, after considering the oral and documentary evidence on record, by judgment, dated 12.01.2008, acquitted the petitioner/accused of the charges levelled against him. In the aforesaid judgment, the learned Magistrate has held that the seizure was not proved and that no signatures of any mediators were taken in proof of seizure of the vehicle and liquor from the petitioner. In the said judgment, the learned Magistrate has categorically held that in view of the discrepancies in the evidence, and in view of the un-corroborated testimony of P.W.1 by any independent evidence, the allegation that the respondents have seized the liquor from the possession of the petitioner/accused while it was being transported illegally, cannot be relied on.

13. Though the findings recorded in criminal proceedings are not binding on the confiscation proceedings, when the officer who is alleged to have seized the vehicle along with the contraband is examined in the criminal proceedings, the evidence recorded therein can be looked at from the point of view of the evidentiary value, coupled with the plea of the petitioner that the vehicle was not seized while it was illicitly transporting liquor but it was seized from his house and a false case is registered against him. The findings recorded in the said judgment would support the plea of the petitioner that the vehicle was not involved in illegal transportation of contraband. Further, in the absence of any finding recorded by the primary and the appellate authorities with reference to the explanation offered by the petitioner to the show cause notice, this Court is of the view that the order of confiscation passed by the primary authority, as confirmed by the appellate authority, is liable to be set aside.

14. For the aforesaid reasons, the writ petition is allowed and the order, dated 05.09.2007, passed by the Deputy Commissioner, Prohibition and Excise, Srikakulam, in Roc No. 309/2006, and the further order, dated 07.11.2007, passed by the Commissioner of Prohibition and Excise, Hyderabad, in proceedings Roc No. 14756/2006/CPE/D-4, are hereby set aside.

15. As it is stated that the confiscated vehicle was released to the petitioner pursuant to the interim order granted by this Court on 27.11.2007 on furnishing term deposit receipt for rupees one lakh, there shall be a direction to the respondents to return the said receipt to the petitioner, in view of allowing of this writ petition.

16. The writ petition is accordingly allowed with the directions referred above. No order as to costs