

**(2013) 03 KAR CK 0116**

**In the Karnataka High Court**

**Case No : Writ Petition NO. 40747 of 2010 (IPR)**

M/s. Four Seasons Wines Ltd.

APPELLANT

Vs

The Commissioner of Excise, M/s. Elite Vintage Winery India  
Pvt. Ltd. and Krishna Valley Wine Yard Pvt. Ltd.

RESPONDENT

**Date of Decision : 25-03-2013**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2013) 03 KAR CK 0116**

**Hon'ble Judges : H.N. Nagamohan Das, J**

**Bench : Single Bench**

**Advocate : S.R. Shiva Prakash, for the Appellant; S.M. Chandrashekar, for R3,  
for the Respondent**

**Final Decision : Allowed**

## Judgement

H.N. Nagamohan Das, J.—Petitioner is the holder of label mark called "Four Seasons" under the Trademarks Act, 1999 as per Annexure-B from the year 1995. Under the provisions of Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 petitioner got approved five brands of wine labels belonging to the trade mark "Four Seasons" for sale of wine in the State of Karnataka from the year 2008-2009 as per Annexure-C. From time to time the label mark is renewed in favour of the petitioner. When the matter stood at that stage, the respondents also obtained the trademark as SEASONS under the Trademark Act. Further the respondents have also obtained five label names as per Annexure-F under the provisions of Karnataka Excise (Bottling of Liquor) Rules, 1967 from the year 2009-2010. On coming to know the label mark obtained by the respondents the petitioner filed objections questioning the grant of label mark in favour of the respondents. On the objections filed by the petitioner the Excise Commissioner issued notice to both the parties to appear before him on 25.02.2010. Accordingly both the parties appeared before the Excise Commissioner, submitted their oral and written arguments. By considering the

rival contentions, the Excise Commissioner passed the impugned order, Annexure-J dated 19.07.2010 rejecting the objections filed by the petitioner. Therefore the petitioner is before this court.

2. Heard arguments on both the side and perused the entire writ papers.

3. It is not in dispute that the Office of Excise Commissioner, Government of Karnataka issued a circular on 30.05.2002 specifying that notice is to be issued for all the distilleries/breviaries/winery/phenny depot, inviting objections and then to consider the claim of a parties for certification of label mark. In the instant case, according to the respondents they issued notice and provided opportunity to the holding company of the petitioner but they failed to avail the opportunity. On the other hand, the petitioner contends that they did not had a fair opportunity to oppose the claim of the respondents for issue of certificate of label mark. Be that as it may, on the objections filed by the petitioner, the Excise Commissioner issued notice, heard both the parties and while passing the impugned order committed illegality in not considering the merits of the case. A reading of the impugned order specifies that the objections are rejected mainly on the ground that petitioner did not object at the first instance in the year 2009-2010 when label mark was certified in favour of the respondents. This reasoning is contrary to the circular and also the rules. On this ground the impugned order at Annexure-J is liable to be set-aside. Sri S.M. Chandrashekar, learned senior counsel for the respondents contend that petitioner has no locus standi to question the label mark granted in favour of the respondents since they do not have the bottling unit in Karnataka. There is no violation of trademark of the petitioner and there is no passing off. All these contentions cannot be gone into by this court in this writ petition under Art. 226. However, the respondents are entitled to take up these contentions before the Excise Commissioner and if such contentions are raised, then the same are to be considered in accordance with law. For the reasons stated above, the following:

#### ORDER

i) Writ petition is hereby allowed.

ii) The impugned order, Annexure-J is hereby quashed.

iii) The matter is remanded to the first respondent for reconsideration in accordance with law after providing an opportunity to both the parties and as expeditiously as possible and in any event not later than 30 days from the date of receipt of copy of this order.