(2019) 02 P&H CK 0237

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16497 Of 2018

M/S Lakhwinder Singh APPELLANT

Vs

State Of Punjab & Another RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Punjab Excise Act, 1914 — Section 15(3)
Constitution of India, 1950 — Article 226, 227

Citation : (2019) 02 P&H CK 0237

Hon'ble Judges : Ajay Kumar Mittal, J;Manjari Nehru Kaul, J

Bench : Division Bench

Advocate : Jagmohan Bansal, Pankaj Gupta

Final Decision : Dismissed

Judgement

1. This order shall dispose of a bunch of 12 petitions bearing CWP Nos. 16497, 19110, 19548, 20436, 20462, 20465, 24271, 24278, 25041, 25044, 25116 and 25121 of 2018 as learned counsel for the parties are agreed that the issue involved in all these petitions is identical. However, the facts are being extracted from CWP No. 16497 of 2018.

2. Prayer in CWP No. 16497 of 2018 filed by the petitioner under Articles 226 and 227 of the Constitution of India is for quashing the order dated 07.05.2018, Annexure P.5 whereby the Excise and Taxation Commissioner, Punjab has declined review application on the ground that his order is appealable.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No. 16497 of 2018 may be noticed. The petitioner herein is engaged in the business of retail sale of liquor. The respondent-State of Punjab like other years declared its excise policy for the year 2016-17 on 13.03.2016. Deviating from previous years, the respondents created new institution namely L-1A in the supply chain of liquor from manufacturer of retail vendors. The petitioner got L-2 and L-14 licences which were valid from 01.04.2016 to 31.03.2017. The

respondents fixed quota which the petitioner was required to lift. The monthly licence fee was also fixed which was required to be paid according to prescribed mechanism. On account of introduction of L-1A licence and other reasons, the petitioner as well as liquor vendors could not get supply of liquor well within time. Still, the respondents demanded licence fee. The petitioner filed CWP No.138 of 2017 assailing recovery of licence fee for the months of April and October, 2016. Vide order dated 27.02.2017, Annexure P.1, this court disposed of all the writ petitions on the statement of Advocate General, Punjab that in the event of filing of application by the petitioner, the state would consider the same after affording opportunity of being heard. In terms of the order passed by this Court read with para 3.19 of the manual, the petitioner moved an application dated 06.03.2017, Annexure P.2, seeking remission of licence fee before the Excise and Taxation Commissioner. Vide order dated 15.09.2017, Annexure P.3, the Excise and Taxation Commissioner declined the application of the petitioner and other licencees on the ground that entries in the manual were intended for guidelines to the officers regarding working of the Department whereas any authority required for having a financial decision had to be supported by some law or rules made thereunder or at least by any Government notification. Aggrieved thereby, the petitioner filed an application dated 20.09.2017, Annexure P.4, under Section 15(3) of the Punjab Excise Act, 1914 (in short, "the Act") on the ground that the Excise and Taxation Commissioner could not take a stand contrary to the statement made before this Court. Vide order dated 07.05.2018, Annexure P.5, the Excise and Taxation Commissioner dismissed the review application on the ground that the orders passed by him were appealable and that the applicants may file appeal before the Government/Financial Commissioner. According to the petitioner, there is no provision of an appeal to the Financial Commissioner against the original order passed by the Commissioner. Hence the instant writ petitions before this Court.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that under Section 15(3) of the Act, the Excise and Taxation Commissioner has the power to review his own order. On the other hand learned counsel for the respondents supported the impugned order.

6. It would be advantageous to reproduce Section 15(3) of the Act which reads thus:-

"15 (3) The Excise Commissioner or the Excise Officer on whom powers of the Excise Commissioner have been conferred under sub-section (2) may review his own order."

7. A plain reading of the above provision shows that power has been provided under Section 15(3) of the Act to the Excise and Taxation Commissioner to review his own order. We, thus, find merit in the contention raised by the learned counsel for the petitioner. In the present case, the petitioner moved an

application dated 06.03.2017, Annexure P.2, seeking remission of licence fee before the Excise and Taxation Commissioner which was dismissed vide order dated 15.09.2017. The petitioner filed review application dated 20.09.2017 under Section 15(3) of the Act which was dismissed by the Excise and Taxation Commissioner on the ground that the order was appealable. The dismissal of the review petition filed under Section 15(3) of the Act on the ground that the order under review was appealable, is legally untenable reason especially when remedy of review specifically is available under the aforesaid provision.

8. In view of the above, since review is maintainable against the impugned order passed by the Excise and Taxation Commissioner, the matter is remanded to the Excise and Taxation Commissioner to decide it afresh in accordance with law. As a result, all petitions are allowed and the impugned orders in all the petitions are set aside.

