

(2020) 05 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (C) No. 9322, 9338 Of 2019

M/S. Renaissance Traders

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:

Assam Excise Act, 2000 — Section 2(m)(n), 2(m)(y), 42, 42(2), 43, 43(3), 43(4), 53, 53(a), 53(1)(a), 54, 55, 56, 57, 61, 71, 74, 75, 75(1), 75(2), 75(3), 76
Code Of Criminal Procedure, 1973 — Section 2(5), 2(h), 160, 165, 166, 171, 183, 190
Assam Excise Rules, 2016 — Rule 107, 110(d)
Constitution Of India, 1950 — Article 226, 300A

Citation : (2020) 05 GAU CK 0021

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : S S Dey, P.N.Goswami, N. N. B. Choudhury, M. Kechi

Final Decision : Dismissed

Judgement

P.K.Deka, J

1. Heard Mr. S. S. Dey, the learned Senior Counsel assisted by Mr. D. J. Kapil, the learned counsel for the petitioner in both writ petitions and Mr. P. N. Goswami, the learned Standing Counsel for the Excise Department, Assam, Mr. N. N. B. Choudhury, the learned Additional Advocate General, State of Arunachal Pradesh and Ms. M. Kechi, the learned Government Advocate, State of Nagaland. Both the writ petitions are on common cause of action and disposed of by this common judgment and order.

2. The petitioners in both the writ petitions are proprietorship firms under proprietors Sri S. Ngain represented by his attorney Sri Merengkaba and Sri I. Olem represented by his attorney Sri Yashi Longkumer respectively. The petitioners are license holders of Para Military Bonded Warehouses based in Dimapur and engaged in the supply business of wholesale Indian Made Foreign Liquour (IMFL) to Para Military Forces in the State of Nagaland by importing it

from other parts of India. The petitioners possessed valid license for wholesale vend of "IMFL". Both the petitioners each on 18.11.2019 imported three number of consignments containing 1600 cases each of IMFL under valid import permits bearing Nos. (i) 59/RT/PMBW/IMFL/19-20, (ii) 60/RT/PMBW/IMFL/19-20 and (iii) 57/RT/PMBW/IMFL/19-20 in WP(C) No.9322/2019, (iv) 61/RAE/PMBW/IMFL/19-20, (v) 60/RAE/PMBW/IMFL/19-20 and (vi) 63/RAE/PMBW/IMFL/19-20 in WP(C) No.9338/2019, all dated 11.11.2019 issued by the Commissioner of Excise, Government of Nagaland, Dimapur, i.e. the respondent No. 5 to be exported by M/S United Brothers Distillers Pvt. Ltd. Naharlagun, Arunachal Pradesh under valid export permits bearing Nos. (i) Ex-Export/UBDPL/81/19-20, (ii) Ex-Export/UBDPL/82/19-20 and (iii) Ex-Export/UBDPL/79/19-20 in WP(C) No. 9322/2019, (iv) Ex-Export/UBDPL/74/19-20, (v) Ex-Export/UBDPL/73/19-20 and (vi) Ex-Export/UBDPL/76/19-20 in WP(C) No.9338/2019 all dated 18.11.2019 issued by the Assistant Commissioner of Tax and Excise, Government of Arunachal Pradesh, Itanagar, i.e. the respondent No. 6. The "IMFL" consignments as per route in the excise passes issued by the concerned Officer-In-Charge at Arunachal Pradesh mentioned that the said consignments would be transported from Naharlagun, Arunachal Pradesh to Dimapur, Nagaland via State of Assam through Bandordewa, Tezpur and Golaghat. The consignments were digitally locked and transported by three trucks each of the petitioners.

3. The aforesaid consignments while being transported through the district of Golaghat on 21.11.2019 and 25.11.2019, a team of Excise Officers under the Superintendent of Excise, Golaghat, Assam seized the same along with the original documents. The drivers of the vehicles were arrested and Excise Case Nos. (i) Ex/GLT/98/2019, (ii) Ex/GLT/100/2019 and (iii) Ex/GLT/101/2019 in WP(C) No. 9322/2019, (iv) Ex/GLT/96/2019, (v) Ex/GLT/97/2019 and (vi) Ex/GLT/99/2019 in WP(C) No. 9338/2019 under Section 53(1) (a) of the Assam Excise Act, 2000 (as amended in 2018) were registered against them.

4. Being aggrieved by the said seizure, the petitioners in WP(C) 9322/2019 challenges the legality and validity of the proceedings under Excise Case Nos. (i) Ex/GLT/98-2019, (ii) Ex/GLT/100/2019 and (iii) Ex/GLT/101/2019 and in WP(C) 9388/2019 Excise Case Nos. (i) Ex/GLT/96/2019, (ii) Ex/GLT/97/2019 and (iii) Ex/GLT/99/2019 all under Section 53(1) (a) of the Assam Excise Act, 2000 (as amended in 2018) and for release of the consignments of the "IMFL" by the respondent No. 4 after holding that the action of the respondent No. 4 to be devoid of any authority under the provisions of the Assam Excise Act, 2000 (as amended in 2018) and the Assam Excise Rules, 2016.

5. Mr. Dey, the learned Senior Counsel referring the definition of the terms 'export', 'import' and 'transport' under Section 2 (m) (n) and (y) respectively of the Assam Excise Act, 2000 (as amended in 2018) (hereinafter referred to as Act of 2000) submits that none of the definition covers the process of export by Arunachal Pradesh Excise department of the IMFL consignment and the import by the Nagaland Government through the petitioners. Referring Sections 53 and 54

of the Act, 2000, it is his contention that none of the offences as stipulated therein covers the act of export and import by the petitioners inasmuch as there were no contravention of any of the provisions under the Act, 2000 or Rules or any license, permit or pass granted under it in respect of manufacture, import, export, transport in order to possess any materials etc nor the said act of transportation of the "IMFL" consignments violated Section 54 of the Act, 2000 as the petitioners neither illegally imported the consignments nor the same were exported illegally. But even then the respondents broke open the digital locks without any authority. The consignments were exported under a valid license issued by the respondent No. 6 to be imported by the petitioners on the basis of valid permits issued by the respondent No. 5. The said transportation of the consignments were through Assam as per the defined route indicated by the respondent No. 6 in the excise passes and as such the process of export and import were not initiated nor completed within the territory and to the extent the Act of 2000 is applicable.

6. Referring to the affidavit-in-opposition of the respondent Nos. 1, 2 and 4 and the intimation cum report in the matter of detection of cases dated 27.11.2019 as forwarded by the respondent No. 4 to the respondent No. 2 it was mentioned that on physical verification and finding anomalies in the physical stock and the consignment, 6 (six) number of vehicles carrying "IMFL" consignments transported from Arunachal Pradesh to Nagaland, the Inspector of Excise, Golaghat detected and registered the said excise cases. But the report of detection annexed to the said letter shows that the detection was carried on 23.11.2019 and on the other hand in the letter as intimated to the respondent No. 2 shows such detection on 24.11.2019 but not on 23.11.2019. The offence report dated 12.12.2019 regarding seizure of the articles in the various Excise Cases by the Inspector of Excise, respondent No. 4, it was informed to the learned C.J.M. Golaghat that on 23.11.2019 the Excise Inspector verified the stock physically with the consignment note in presence of the Assistant Commissioner, Golaghat and found variations which violated Rules 107 and 110 (d) of Assam Excise Rules, 2016. The information of seizure was intimated to the department of Excise, Arunachal Pradesh and there was no interest taken by them. Further it was stated before the learned C.J.M that release of the seized consignments/vehicles would amount interference under Sections 74 and 75 of the Act, 2000 which empowers the department to confiscate and auction the seized consignments and as such the respondent No. 4 prayed not to give zimma of the said consignments to the petitioners in order to discourage fraudulent activities in the name of supply to the Indian Paramilitary Forces at Nagaland. Such prayer after the seizure, before the learned C.J.M Golaghat and orders thereof are without any jurisdiction as argued by Mr. Dey.

7. Mr. Dey again took note of the report of the Excise Inspector, respondent No. 4 to the learned C.J.M at Golaghat dated 10.01.2020 wherein the ground for seizure of the vehicles with consignments was due to violation of the route as specified in the passes and the consignments. Referring to the contents thereof

that upon physical verification of stock with consignment note in presence of the Assistant Commissioner, Golaghat the batch number and date of manufacture did not match with seized articles as stated in the consignment note and in support of the said claim, the export permit and physical verification report were enclosed. It also concluded that the permits were fake one and the consignments of IMFL under the permit were not fit for human consumption and samples from the items were taken and submitted to the Chemical Analyser of Excise Department, Assam for analysis and report on 23.11.2019, but it is apparent that without the report it was held that the IMFL under the consignments were not fit for human consumption. By the said offence report granting of zimma of the vehicles and the liquor were prayed to be rejected.

8. Referring the said report it is the contention of Mr. Dey that the respondents more specifically the respondent No. 4 in order to make out a case tried to develop the same by sending offence reports one after another to the learned C.J.M. The offence report submitted before the learned C.J.M. at Golaghat on 01.02.2020 indicates unlawful transport, possession and sale of intoxicant "IMFL" but in order to attract the offences as per Sections 53 and 54 of the Act 2000, the same required to be proved which is not the case in hand. Admittedly the consignments were exported and imported beyond the territorial jurisdiction of the Act 2000 and none of the offences falls within the purview of the Act 2000 for which it is the contention of Mr. Dey that the exercise of the jurisdiction/authority by the Excise officials under the Act 2000 is itself wrong which requires setting aside and quashing of the proceedings.

9. Mr. Goswami, on the other hand, took the issue of maintainability of both the writ petitions on the ground that in each of the writ petitions, the individual petitioner sought for quashing of three separate Excise Cases which is not permitted. It is his submission that M/S United Brothers Pvt. Ltd. who was the seller (exporter) filed a zimma application before the learned Additional C.J.M at Golaghat who rejected the prayer for zimma vide order dated 27.01.2020 as the confiscation proceeding was not yet over. Prior to that vide order dated 10.01.2020 upon consideration of confiscation proceeding under Sections 74 and 75 of the Act, 2000 being initiated, the zimma petition was rejected. Without challenging the said rejection orders, the writ petitions are not maintainable inasmuch as there is a specific prayer by the party involved in the transaction of export for a direction to the respondent No. 4 by the learned Addl. CJM, Golaghat to release the consignment of "IMFL". Prima facie an offence is committed under Section 53(a) as apparent from the order of the learned Additional CJM. Referring the order it is submitted that the contents of "IMFL" consignments are not fit for human consumption as the chemical analysis report does not confirm to ISI standard. Sections 74 and 75 of the Act 2000 authorized the court or the Collector to pass necessary order for confiscation and in order to pass such confiscation order, Section 71 of the Act, 2000 comes into action which stipulates that in any proceeding taken under Section 75, when the question arises whether an offence punishable under the Act, 2000 was committed in respect of any

intoxicant it may be presumed until contrary is proved, that the possession was in contravention of the Act, 2000. Accordingly whenever a confiscation proceeding is pending before a Magistrate or before the Collector, on the basis of the said presumption, confiscation can be ordered. In the present case in hand, it is the contention of Mr. Goswami that Section 75 (1) is to be exercised by a judicial forum and on the other hand, Section 75(2) and (3) are administrative in nature for the Collector to confiscate under Section 75(3) read with Section 71 of the Act, 2000. Referring to the physical verification of the consignments, Mr. Goswami relies the physical verification report relied in the affidavit-in-opposition by the respondent No. 2 wherein there are variations in respect of batch number and date of manufacture. The said physical stock verification were carried on 23.11.2019 in presence of witnesses which requires a full length trial for final adjudication of the offences charged against the persons concerned.

10. Mr. Goswami submits that the Hon'ble High Court should not interfere while the process for confiscation is on. In support of his contention he relied (1) Oma Ram -Vs-State of Rajasthan reported in 2008 (5) SCC 502, (2) State of Karnataka -Vs- K. Krishnan reported in 2000 (7) SCC 80 and (3) Khoday Distilleries Ltd. and Others - Vs- State of Karnataka and Others reported in (1995) 1 SCC 574.

11. Mr. Choudhury, the learned Additional Advocate General, Arunachal Pradesh submits that the export permit was issued by the Assistant Commissioner, Excise under Government of Arunachal Pradesh, and as per records, the export permits in question were issued after due approval of competent authority. As per the passes defining the route, the consignments were to enter Nagaland via Banderdewa, Tezpur and Golaghat and there was no violation of any provisions under the Act, 2000. Similarly, Ms. Kechi also submits that the import licenses were duly issued by the Government officials of the State of Nagaland through concerned department. Both the learned counsel confined their respective submissions to the extent of the genuineness and the validity of documents of the consignments only and not beyond that.

12. I have considered the submissions of the learned counsel. The petitioners filed these writ petitions for setting aside and quashing of the proceedings initiated under various Excise Cases referred hereinabove on the ground that the action of the Excise Officials of the Golaghat district under Assam Excise Act, 2000 are illegal, arbitrary and totally uncalled for inasmuch as the Act, 2000 does not in anyway empower the excise officials of Assam to search and seize any "IMFL" consignments originating from the State of Arunachal Pradesh which is meant for State of Nagaland. The consignments, each of 1600 cases of "IMFL" were duly imported after following due procedure under the law on valid export licenses under the Arunachal Pradesh Excise Act, 1993 and the Rules thereof along with import licenses under the Nagaland Excise Act, 1967 and the Nagaland Excise Rules, 1972 read with Liquor Total Prohibition Act, 1989.

13. In the present case in hand, it is the Inspector of Excise, Golaghat (Sadar) who initiated the search in the consignments which were on transit from

Arunachal Pradesh to Nagaland purportedly through a specified route from Naharlagun in the State of Arunachal Pradesh to Dimapur in the State of Nagaland via State of Assam through Bandordewa, Tezpur and Golaghat as per the consignment notes. The vehicles were seized on 24.11.2019 and on 25.11.2019 for violation of route as it was seized at a place called Telgarom in the Golaghat district. It is submitted by Mr. Dey that the violation of terms 'export', 'import' and 'transport' refers only within the territories to which the Assam Excise Act, 2000 applies. The respondent Nos. 5 and 6 admitted the genuineness respectively, of the import and the export licenses. The consequential movement of the consignments during the transit were as per the consignment notes and the officials under the said Act, 2000 had no business to break open the digitally locked consignment. The consignments originated in the State of Arunachal Pradesh and the point of delivery was at Dimapur and the Act, 2000 has no applicability in both the said points. Mr. Goswami on the other hand raised the issue of maintainability of the writ petitions more specifically due to the orders passed by the learned Addl. C. J. M, Golaghat rejecting the zimmer application which remained unchallenged. Mr. Dey wanted to project that the actions initiated by the Excise Officials are without jurisdiction. If the same is answered in the affirmative then in my considered opinion, the same would have a bearing upon the said orders of the learned Addl. C. J. M, Golaghat rendering the orders infructuous as the jurisdiction assumed by the court below would be null and void. Accordingly while exercising the jurisdiction under Article 226 of the Constitution of India by this court it has ample power to interfere with the said orders on its own and as such I am unable to accept the submission of Mr. Goswami.

14. In order to examine the contention of Mr. Dey, it would be proper to look into the power and jurisdiction given to the Excise officials under the Act of 2000. Section 42 Sub-Section (2) of the Act, 2000 stipulates that any other Excise Officer leaving the Collector under the Act, 2000 when specially empowered to investigate by the State Government in respect of all or any specified class of offences punishable under the Act of 2000 may, without the order of the Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such officer is appointed would have power to inquire into or try under the provisions of Chapter XIII of the Code of Criminal Procedure, 1973, relating to the place of inquiry or trial. Section 43 of the Act of 2000 stipulates that any Collector or other Officer empowered under the provisions of sub-section (2) of Section 42 having recorded in writing his reason for suspecting the commission of an offence which he is empowered to investigate, may exercise the power conferred upon a Police Officer making an investigation or upon an Officer-in-charge of a Police Station by sections 160-171 of the Code of Criminal Procedure, 1973 and as regards offences punishable under sections 53, 54, 55, 56, 57 and 61 of the Act, 2000, the powers conferred upon such Police Officers, in respect of cognizable offences under Sections 55 and 57 of the Criminal Procedure Code.

15. Section 43 Sub-Section (3) of the Act 2000 for the purposes of Section 166 of the Code of Criminal Procedure, 1973 authorises an officer specially empowered under Sub-Section (2) of Section 42 of Act 2000 who shall be deemed to be a Police Station and such officer shall be the Officer-in-Charge of such station. Section 2(5) of the Code of Criminal Procedure, 1973 defines "Police Station" as any post or place declared generally or specially by the State Government to be a police station and includes any local area specified by the State Government in this behalf. Sub-Section (4) of Section 43 of the Act 2000 stipulates that once the investigation under Section 42 of Act 2000 is completed and if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the Investigating Officer when doesnot proceed under Sub-section (2) of Section 42 or under Section 76 shall submit a report, which for the purposes of Section 190 of the Cr.P.C., 1973 shall be deemed to be a police report and the local Magistrate having jurisdiction to inquire into or try the case is empowered to take cognizance of offence on the police report.

16. The aforesaid provisions of Sections 42 and 43 of the Act 2000 are taken note of in order to show the legislative intent and purpose of the Government of Assam in Excise Department vesting the sphere of activity in the field of crime detection and crime punishment upon the officials of Excise department inasmuch as investigation of an offence is the field exclusively reserved for the executive through the Police Department, the Superintendence over which vests in the State Government as held by the Hon'ble Supreme Court in State of Bihar and Anr -Vs- J. A. C. Saldanna and Ors and R. P. Singh -Vs-J. A. C. Saldanna and Ors reported in AIR 1980 SC 326.

17. In Khoday Distilleries Ltd and others -Vs- State of Karnataka and others reported in (1995) 1SCC 574 the Apex Court held that potable liquour as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which res extra commercium being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquour. Hence the trade or business in liquour can be completely prohibited. So considering the harmful effect of potable liquour the Government of Assam enacted the Assam Excise Act, 2000 which is a complete Code so far the field of crime detection and crime punishment is concerned relating to import, export, possession of intoxicating liquour and of intoxicating drugs.

18. Section 183 under Chapter XIII of the Criminal Procedure Code, 1973 prescribes offence committed on journey or voyage wherein the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage. The journey spoken of in the said section must be a continuous journey from one terminus to another. The legal fiction engrafted in Section 183 Cr.P.C. should be limited to offence actually committed during journey and not beyond that.

19. Section 165 of the Code of Criminal Procedure, 1973 authorises a Police

Officer-in-charge of a police station or a police officer making an investigation who has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence, which he is authorized to investigate may be found in any place within the limits of the police station of which he is in charge and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station. From the aforesaid discussions it can be concluded that Sections 42 and 43 of the Act of 2000 authorises the Excise officials under the Act of 2000 to invoke the power under the prescribed provisions of the Criminal Procedure Code, 1973 and the same authorizes the officials under the Act, 2000 to investigate any offence during the journey and if the said official is satisfied that he has reasonable grounds of commission of any offence under the Act, 2000 he is authorized to go for search and seizure of the consignments on 'journey'.

20. The report to the learned CJM, Golaghat dated 10.01.2020, records the suspicion of the Excise official about the commission of an offence which he was empowered to investigate due to violation of route indicated in the passes issued by the officials of Arunachal Pradesh. Once such suspicion is recorded, the empowered Excise official is authorized to exercise the power conferred upon a police officer carrying out an investigation under Sections 160-171 of the Cr.P.C. The "investigation" envisaged in the Act 2000 is the one defined under Section 2(h) of the Code of Criminal Procedure 1973 which includes all the proceedings under the Code for the collection of evidence conducted by a police officer. The Excise officials are clothed with the power of investigation under Section 160-171 of the Cr.P.C and as the said satisfaction to investigate with reasons was recorded, the concerned Excise official was authorized to seize after search being carried out under Section 165 of the Cr.P.C. Accordingly, the action of the Excise official or officials in breaking the digital lock of the consignments falls under Section 165 Cr.P.C. read with Sections 42 and 43 of the Act, 2000. Chapter IX of the Act, 2000 prescribes the penalties and procedure for the offences covered by it. For investigation the offences as mentioned in the report of Excise official requires no proof but a prima facie satisfaction is required and not beyond that. However, the grounds for suspecting the commission of an offence under the Act of 2000 must be recorded by the investigating Excise officer which in my considered opinion is recorded in the present case in hand as hereinabove stated and that is sufficient to go ahead with the process of investigation.

21. Merely, the consignments were exported from a State and imported to another one and there being no applicability in both the States of the Act, 2000 that itself cannot be the ground to hold that the Excise officials had no jurisdiction to carry on the search and seizure of the consignments while on transit through an area covered by the force of the Act, 2000. The jurisdiction exercised for investigation by the Excise officials of the Golaghat district is proper

inasmuch as it evolves out of Section 183 under Chapter XIII of the Cr.P.C., 1973 through Sections 42 and the investigation part under Section 43 of the Act, of 2000. The subsequent rejection of the zimma application and the process for confiscation of the consignments on the ground of variation of the Batch Number and the date of manufacture on inspection of the consignment notes also prima facie shows coupled with the chemical analysis report that a case is made out on the basis of the investigation while exporting the consignments from the State of Arunachal Pradesh to the State of Nagaland which is required to be tried by the competent court of law.

22. Mr. Dey submits that the action of seizure and non releasing of the consignments affected the rights of the petitioners under Article 300 A of the Constitution of India. In this regard it would be appropriate to take note of the decision of the Apex Court in case of Khoday Distilleries Ltd. and Others -Vs- State of Karnataka and Others (supra) wherein it was held that a citizen has no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited and as such I am unable to accept the said submission of Mr. Dey.

23. Accordingly, I do not find any merit in these writ petitions and the same are dismissed but without costs.