(2011) 11 AP CK 0145

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5254 of 2011

M/s. Siddivinayaka Wines, Nalgonda — APPELLANT

Vs

The Commissioner of Prohibition and Excise, Nampally, Hyderabad and others — RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 38, 47(2), 47A, 47A(1)

Citation : (2011) 11 AP CK 0145

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : K. Laxmaiah, for the Appellant;

Judgement

C.V. Nagarjuna Reddy

1. This Writ Petition is filed for a mandamus to declare the action of the respondents in not releasing the bank guarantee/challan of Rs. 78,953/-credited to Crime No. 648/2010-11 on the file of the S.H.O., Prohibition & Excise, Huzurnagar Police Station, Nalgonda District, as illegal and arbitrary. The petitioner sought for a consequential direction to the respondents to release the challan.

2. The petitioner is a holder of A-4 licence for running retail liquor shop. When certain quantity of beer belonging to the petitioner was being transported, the same was intercepted at Gopalpuram, near Huzurnagar town and the stock was seized. A criminal case was registered against the petitioner. The petitioner requested for compounding the case. The petitioner''s request was recommended by respondent No. 2 and accepted by respondent No. 1 vide his proceedings Cr.No.17054/2010/CPE/G2, dated 17-1-2011, subject to the condition of the petitioner paying compounding fee of Rs. 50,000/-and also payment of the value of the seized stock. The petitioner accordingly deposited the sum of Rs. 50,000/-and also Rs. 78,953/-representing the value of the seized stock through Bank challan (wrongly described as bank guarantee in the Writ Petition). The petitioner

approached the respondents for return of the bank challan on the ground that once the compounding fee is levied and collected, he is not liable to pay the value of the seized stock. As the said amount has not been refunded, the petitioner filed the present Writ Petition.

3. At the hearing, Sri K. Lakshmaiah, learned counsel for the petitioner, placed reliance on the Judgment of a learned Single Judge of this Court in Indian Wine Corporation Vs. State of Andhra Pradesh 1997 (5) ALD 232, in support of his submission that the petitioner is entitled to refund of the value of the stock.

4. Per contra, the learned Assistant Government Pleader for Prohibition & Excise, submitted that the Judgment of the learned Single Judge in Indian Wine Corporation (1-supra), on which reliance is placed by the learned counsel for the petitioner, is no longer good law in view of the Judgments of Division Bench of this Court in V. Sreenivasa Reddy Vs. Commissioner of Excise, Government of A.P. Hyd. and Another, and A. Ramesh Babu Vs. Commissioner of Prohibition & Excise W.A. No. 497/2010, dt. 19-10-2010.

5. In Indian Wine Corporation (1-supra), the learned Single Judge, on the interpretation of Section 47-A of the A.P. Excise Act, 1968 (for short "the Act") which confers special powers on the Commissioner to compound an offence falling u/s 38 of the Act, held that the phrases "compounding fee" and "compensation" are used as synonymous terms and that once the compounding fee is collected, the owner of the goods shall not be called upon to pay the full value of the stock seized after payment of such compounding fee or compensation.

The Division Bench of this Court in V. Srinivas Reddy (2-supra) however dealt with Section 47(2) of the Act and interpreted the said provision as conferring power on the Commissioner to order compounding on payment of the sum of money or value of the stock seized, or both, as the case may be, in accordance with the provisions of sub-section (1) of Section 47-A of the Act. The said view is reiterated in Thuti Vidyasagar Reddy Vs. The Commissioner, Prohibition and Excise, Hyderabad and 2 others W.A. No. 490 of 2010, dt.19-10-2010.

6. In the instant case, it is not in dispute that the seized beer suffered duty. The only ground on which the beer was seized is that the stock was not handed over at the petitioner''s shop premises but the same was being transported to a different place at Huzurnagar side. Section 47(2) of the Act vests discretion in the Commissioner to permit composition of an offence either by collecting the compounding fee or the value of the stock or both. It is therefore not obligatory on the part of the Commissioner to impose the condition of payment of the value of the seized stock in every case. Where the Commissioner is satisfied that the offence is not grave in nature, he can either levy compounding fee or collect the value of the seized stock. When the Legislature vests discretion in an authority, it is expected that such discretion is exercised in a reasonable and rational manner. Mere existence of discretionary power shall not entitle the authority to exercise

such power in a mechanical manner without being conscious of the gravity of the offence. There is no allegation against the petitioner that the stock was intended to be diverted or sold in an unlawful manner. It is also not alleged that the petitioner is dealing in non-duty paid liquor. In this factual background, I am of the opinion that respondent No. 1 has not exercised the discretion vested in him in a sound and rational manner by directing payment of the value of the seized stock, having already levied the compounding fee of Rs. 50,000/-. The petitioner, having already paid the value of the seized stock to A.P. Beverages Corporation Limited, it would be wholly iniquitous to collect the same once again from him. No specific reasons have been assigned by the Commissioner to subject the petitioner to such a harsh penalty.

7. On the facts of this case, as discussed above, I am of the opinion that the condition directing payment of the value of the seized duty paid liquor, is wholly irrational and unreasonable. Accordingly, the impugned order, to the extent of stipulating the condition of payment of the value of the seized stock, is set-aside. The respondents are directed to refund the sum of Rs. 78,953/-representing the value of the seized stock, to the petitioner. The Writ Petition is accordingly allowed to the extent indicated above.

8. As a sequel, WPMP No. 6534/2011 is disposed of as infructuous.

