

(2024) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No.12581 of 2021

M/s Vinum Traders Pvt. Ltd.

APPELLANT

Vs

State of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 04-07-2024

Acts Referred:

Code of Criminal Procedure 1973 — Section 144

Citation : (2024) 07 MP CK 0008

Hon'ble Judges : Vivek Rusia, J, Rajendra Kumar Vani, J

Bench : Division Bench

Advocate : Prashant Sharma, Ankur Mody

Final Decision : Dismissed

Judgement

Vivek Rusia, J, Rajendra Kumar Vani, J

The petitioner has filed the present petition challenging the order dated 20.2.2021 passed by the Excise Commissioner, Gwalior whereby the representation of the petitioner has been rejected.

2. Facts of the case in short are as follows:

(i) The petitioner was granted a liquor license in 2020-21 for 280 days to sell the liquor in the shop within the District Shivpuri. During the COVID-19 pandemic, the District Administration, Shivpuri issued notices under Section 144 of Cr.P.C. for closure of the shops during certain periods. According to the petitioner, the exemption was granted by the District Crisis Management Committee for opening the shops to sell essential commodities like milk, medicines, petroleum products, fertilizers, fruits, vegetables, and LPG cylinders. According to the petitioner, no permission was granted to the petitioner/licensee to keep the liquor shops open during the lockdown period. According to the petitioner, in other districts, the said period was declared as a dry day and exemption has been granted in payment of the minimum guarantee/excise duty but in district Shivpuri, the period on which the liquor shops were closed was not declared the dry days,

hence, the petitioner could not get the benefit of exemption in payment of minimum guarantee/excise duty. The petitioner has filed a photocopy of orders issued by the Collector and District Magistrate Shivpuri under Section 144 of Cr. P.C, 1973 starting from 6.7.2020 to 4.8.2020 collectively as Annexure P/6. The petitioner has also filed a copy of the order dated 17.8.2020 issued by the Collector (Excise), Bhopal, whereby exemption was granted in license fee from 7.7.2020 to 16.8.2020, i.e., 14 days on which the shops were closed due to Corona Pandemic. The Petitioner has also filed other copies of orders dated 17.8.2020 issued for the period 9.8.2020 to 16.8.2020.

(ii) The petitioner filed W.P. No.10344/2020 seeking a writ that the respondent be restrained from making recovery of license fee payable during the lockdown period from 6.7.2020 to 12.7.2020 and 13.7.2020 to 19.7.2020 and for a further period of lockdown as those days are liable to be treated as Dry days. Vide order dated 11.8.2020, the writ petition was disposed of in the light of the judgment passed in the case of Maa Vaishno Enterprises and others vs. the State of M.P. and another in W.P.No.7373/2020 decided on 22.7.2020. Thereafter, the petitioner preferred a Writ Appeal No.838/2020 which was disposed of vide order dated 5.9.2020 by directing the Commissioner (Excise) to decide the representation of the petitioner. Now vide order dated 20.2.2021 the Excise Commissioner has rejected the representation and granted exemption from minimum guarantee/excise duty only for the day 26.7.2020 Rs.13,73,571/-. Hence, this petition before this Court.

(iii) After notice, the respondents have filed a return by submitting that as per terms and conditions of liquor policy especially Clause 49 in case of non-supply of liquor to the liquor vent the Licensee would not be entitled to claim the deductions in payment of minimum guarantee/excise duty, hence the Writ Petition is devoid of merit.

3. It is further submitted by the respondents that opening and closing of the liquor vent is exclusively regulated by the orders issued by the Excise Department and not covered under the directions for lockdown issued under Section 144 of Cr.P.C. by the District Administration. No such direction was issued under Section 144 of Cr.P.C. during the lockdown period for closing the liquor shops in District Shivpuri by the Collector (Excise). In Shivpuri, only a day was declared as a dry day by the Collector (Excise) for which the petitioner has been granted benefit in the impugned order. The State Government issued a circular dated 22.7.2020 directing all the District Magistrates clarifying that it should be clearly mentioned in the prohibitory order issued under Section 144 of Cr.P.C. for closing down the liquor shops. It is further submitted that the petitioner is claiming the benefit of deduction on the ground that shops were closed during the corona period especially the period covered under the prohibitory orders issued under Section 144 of Cr.P.C. but a surprise inspection was carried out by a team of Excise in the vent/ shops of the petitioner and fines were imposed. A copy of the summary sheet of fines imposed on various liquor shops of the

petitioner during the said period is filed as Annexure R/3 along with the return. Hence Writ Petition be dismissed.

4. The petitioner has not filed any rejoinder to deny the aforesaid fact. The liquor license was granted to the petitioner by the Excise Department to sell the liquor through various retail shops. Opening and closing of the shops are governed by the directions issued from time to time by the Excise Department. The Collector issued an order under Section 144 of Cr.P.C. only in respect of closing and opening of the shops relating to certain essential items in which there is no special prohibition for opening and closing of the liquor shops. The petitioner has not filed any documents to show that during that period, its liquor shops were closed in compliance with the order issued under Section 144 of Cr.P.C. The petitioner has failed to explain from the ledger account, stock register, and sale and purchase record of the shops to show that no liquor was sold during the said period. On the basis of a presumption that during the period when the orders under Section 144 of Cr.P.C. were issued, the petitioner shops were closed the claim of the petitioner cannot be allowed. The petitioner cannot claim parity with that licensee of other Districts because the petitioner had a license in Shivpuri District and whether the petitioner kept his vents/shops closed during the corona period is liable to be established by the cogent evidence as stated above that no such material has been produced by the petitioner to show that the shops were closed and there was no sale of liquor was made.

5. Besides the above reasoning to dismiss the Writ Petition it is also important to take note that the liquor policy notified for the year 2020-2021 (From 1st April 2020 till 31st March 2021), on 25.05.2020, was amended vide notification dated 23.05.2020 for compensating the losses to the licensees due to the closure of liquor shops due to Corona Covid-19 Pandemic. Clause 70 has been inserted for giving relaxation in payment of Minimum Guaranteed Excise Duty payable at the rate of 10%, which is reproduced below:-

70-o"KZ 2020-21 vuqKfIr?kkfj;ksa dks mudh BsdK vof/k fnukad 31-05- 2021 rd c<k;h tkus dk fodYi:- dksfoM-19 ds dkj.k mn~Hkwr ifjLFkfr;ksa dks n`f"Vxr j[krs gq, o"KZ 2020-21 ds vuqKfIr/kkfj;ksa dks mudh BsdK vof/k fnukad 31-05-2021 rd c<k;s tkus dk fodYi fn;k tkrk gSA ;fn bl fodYi ds p;u gsrq dksbZ vuqKfIr/kkjH vkcdkjH vk;qDr }kjk fu/kkZfjr izk:i esa viuk lgefR vkosnu] okafNr nLrkostksa ds lkFk lacaf/kr ftyk dysDVj dks izLrqr djrk gS] rks BsdK lapkyu dh vof/k fnukad 31-05-2021 rd ftyk dysDVj }kjk c<k;h tk ldsxhA tks vuqKfIr/kkjH bl fodYi dk ykHk u ysuk pkgs] os ewy vkcdkjH uhfr o"KZ 2020-21 ds vuqKfIr BsdK lapkyu djrs jgsaxsA ftu vuqKfIr/kkfj;ksa ds vkosnu Lohdkj fd;s tkrs gSa] ek= muds fy, bl dafMdk dh fuEufyf[kr mi dafMdk,sa ykxw gksaxhA

70-1 vuqca/k ds fy, okf'kZd ewY; dh x.kuk fuEukuqlkj gksxh %-

(d-) uohu of"KZd yk;lsal Qhl = orZeku of"KZd yk;lsal Qhl - ykWdMkmu vof/k ds fy, yk;lsal Qhl esa nh xbZ NwV + o"KZ 2021 -22 ds ekg vizSy ,oa ebZ gsrq izR;sd vfrfjDr fnol ds vk/kkj ij ifjxf.kr yk;lsal QhIA

([k-) uohu U;wure izR;kHkwr dh jkf'k = orZeku U;wure izR;kHkwr dh jkf'k - ykWdMkmu vof/k ds fy, U;wure izR;kHkwr dh jkf'k esa nh xbZ NwV + o"kZ 2021-22 ds ekg vizSy ,oa ebZ gsrq o"kZ 2020-21 ds ekg vizSy ,oa ebZ ds fy, fu/kkZfjr U;wure izR;kHkwr dh jkf'kA

70-2 dafMdk 31-1 ds vuqlkj ekg ebZ 2020 ,oa twu 2020 ds fy, U;wure izR;kHkwr jkf'k] of"kZd U;wure izR;kHkwr dh jkf'k ds 10 izfr'kr izfrekg ifjxf.kr gksrh gSA fodYi pquus okys vuqKfIr/kkfj;ksa ds fy, ekg ebZ 2020 ,oa twu 2020 ds fy;s ;g jkf'k 7-5 izfr'kr izfr ekg fu;r dh tkrh gSA bl izdkj 'ks"k jgh 5 izfr'kr U;wure izR;kHkwr dh jkf'k dh olwyh ekg tuojuh 2021 ls ebZ 2021 dh vof/k esa izfrekg 1 izfr'kr vfrfjDr :i ls dh tk,xhA

70-3 uohu ifjxf.kr of"kZd yk;lsal Qhl rFkk orZeku of"kZd yk;lsal Qhl ds varj dh jkf'k fnukad 31 ekpZ 2021 rd vfuok;Z :i ls tek dh tk;sA

70-4 uohu ifjxf.kr izfrHkwfr jkf'k dk U;wure 20 izfr'kr fodYi izLrqr djus ds lkFk tek djuk vfuok;Z gSA fodYi izLrqr djus ds vafre fnol ls 7 dk;Z fnol ds Hkhrj 20 izfr'kr rFkk 21 dk;Z fnol ds Hkhrj 'ks"k 60 izfr'kr tek dh tk;sA

70-5 fodYi ds lkFk fu/kkZfjr 'kiFk i=] MsVsM pSd ,oa izfr:i djkj izLrqr djuk vfuok;Z gksxkA dqYk 22 iksLV MsVsM pSd (= 18 iwoZ fu/kkZfjr + 4 c<h gqbZ vof/k ds fy,) tek djuk vfuok;Z gksxkA

70-6 bl vf/klwpuk ds jkti= esa tkjh gksus ds fnukad ls 05 fnol dh vof/k (vFkok ,slh vof/k tSlk jkT; 'kklu fu;d dj)s esa orZeku vuqKfIr/kkfj;ksa dks mijksDr fodYi] ;fn os mfpr le>s] pquuk vko';d gksxk] vU;Fkk ;g ekuk tk;sxk fd os iwoZ vuqca/k ij dk;e gS rFkk o"kZ 2020-21 ds fy, izko/kkfur vkcdkj O;oLFkk (jkti= fnukad 25-02-2020) ds vuq:i efjnk nqdkuksa dk lapkyu djuk muds fy, ca/kudkj gksxkA

70-7 ewy vkcdkj uhfr o"kZ 2020-21 ds leLr lqlaxr izko/kku] fodYi pquus okys vuqKfIr/kkfj;ksa ds fy, c<ah gqbZ vof/k (01 vizSy] 2021 ls 31 ebZ] 2021) esa ;qfDr;qDr :i ls ykxw gksaxsA

70-8 ;fn la'kksf/kr uhfr ds fdz;kUo;u esa dksbZ dfBukbZ mRiUu gksrh gS] vFkok vkcdkj O;oLFkk ds lqpk: :i ls lapkyu ds fy, ,slk djuk vko';d izrhr gks] rks vkcdkj vk;qDr rnuqlkj leqfpr funsZ'k tkjh dj ldsaxsA

of"kZd ewY;] of"kZd yk;lsal Qhl ,oa U;wure izR;kHkwr M~;wVh dk fu/kkZj.k

6. By way of the first relaxation, the license period was enhanced for an additional two months i.e. up to 31.05.2021 and the option to the licensee was given that if it is acceptable to them then they would submit an application/representation to the Collector and if applications are accepted then for those licenses clause 70.1 to 70.8 would apply.

7. The writ Court has rightly observed that this issue has been decided by the Division Bench of this Court in the case of Maa Vaishno Enterprises (supra). In the aforesaid case, the Division Bench held that because of the pandemic, no loss has been caused to the licensee and thereafter the State Government has

granted various relaxations and extensions of the license period to compensate the loss to the licensee during the corona period, therefore, no case for interference with the impugned order is made out.

8. Accordingly, the petition sans merit is dismissed. No order as to cost.