(2014) 04 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 97/2014

Pabu Ram APPELLANT

Vs

Excise Commissioner RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Excise Act, 1950 — Section 19, 54, 54A, 69, 9A

Citation : (2014) 2 WLN 401

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : Nand Kishore, Advocate for the Appellant; Sachin Acharya, Advocate for the Respondent

Judgement

Pratap Krishna Lohra, J.—This matter comes up before this Court in the spirit of Lok Adalat for disposal. Petitioner has preferred this writ petition challenging the impugned order dt. 18.12.2013 passed by Additional Excise Commissioner, Jodhpur Zone, whereby while passing order under Sec. 69 read with Section 54A of the Rajasthan Excise Act 1950 (for short, ''Act of 1950''), it has ordered release of vehicle Scorpio No. RJ-07-UA-0281 subject to the condition that petitioner shall deposit a sum of Rs. 2,50,000/- (Rupees two lac fifty thousand only).

2. The vehicle of the petitioner aforesaid was seized by the Police Station Pratap Nagar, Jodhpur and a case under Sec. 19/54 of the Act of 1950 was registered against the petitioner for unauthorizedly carrying contraband i.e. english wine without permission or licence.

3. When the matter came up before this Court at the threshold, on 09.01.2014 the Court while admitting the petition issued notice to the respondents and passed following interim order:

In the meanwhile, the vehicle confiscated shall not be put to auction provided the petitioner deposits a sum of Rs. 1,25,000/- within a period of two weeks and furnishes solvent surety for the remaining amount to the satisfaction of District Excise Officer, Jodhpur. On compliance of the order passed as aforesaid by the petitioner, the vehicle seized shall be released to him on Supardginama.

4. Learned counsel for the petitioner submits that the case registered against the petitioner is false and therefore impugned order is liable to be quashed. Learned counsel further submits that pursuant to the interim order vehicle in question has already been released after deposition of the requisite(sic) amount quantified by the Court and therefore the matter is required to by decided on merit.

5. Per contra, learned standing counsel for the Excise Department, Dr. Sachin Acharya has argued that against the impugned order equally efficacious alternative remedy is available to the petitioner under Sec. 9A of the Act of 1950 and therefore the present writ petition is not maintainable.

6. I have heard learned counsel for the parties and perused the impugned order.

7. The question about availability of alternative remedy is vital and for examining the said question it is necessary to have a glance at Section 9A of the Act of 1950. Section 9A of the Act of 1950 reads as under:

Sec. 9-A. Appeals and Revision-

(1) An appeal shall lie-

(a) to the Excise Commissioner from any order passed by an Excise Officer under this Act, and

(b) to the Division Bench of the Rajasthan Tax Board constituted under Sec. 88 of the Rajasthan Value Added Tax Act, 2003 (Act No. 4 of 2003)] from any order passed by the Excise Commissioner under this Act otherwise than on appeal:

(2) Any appeal under Sub-Section (1) may be preferred at any time within sixty days from the date of the order complained of.

(3) The decision of the Excise Commissioner or Division Bench of the [Rajasthan Tax Board] as the case may be, on such appeal shall, subject to the result of revision, if any, under Sub-Section (4), be final.

(4) The Division Bench of the Rajasthan Tax Board may revise any order passed on appeal by the Excise Commissioner.

Provided that no appeal shall be entertained unless it is accompanied by a satisfactory proof of payment of 75% of the amount of the demand created by the order appealed against

(5) Any revision under Sub-Section (4) may be preferred at any time within thirty days form the date of the order complained of.

8. It is a trite law that extraordinary jurisdiction enshrined under Art. 226 of the

Constitution of India is to be exercised sparingly when aggrieved individual can avail alternative efficacious statutory remedy. True it is that there is no absolute bar to entertain a writ petition when alternative remedy is available, but then it is a self-imposed restriction which the law Courts are following consistently. Thus, in view of remedy available to the petitioner under Sec. 9A of the Act of 1950 before the Excise Commissioner/Tax Board within a period of one month from the date of receiving copy of the order, I am not inclined to interfere with the impugned order. As the petition is pending before this Court and interim protection has been granted to the petitioner, the present writ petition is disposed of with the observations that in case petitioner files an appeal before the competent appellate Authority, the same shall be considered and decided by the Authority on merit as expeditiously as possible after affording reasonable opportunity of being heard to the petitioner within a period of one month from the date of filing of appeal. The interim protection granted to the petitioner shall remain in currency till decision of the appeal. It is also observed that appellate Authority shall consider the prayer for reduction of penalty imposed against the petitioner in the impugned order sympathetically in accordance with law.

