(2014) 10 MP CK 0068

In the Madhya Pradesh High Court

Case No : WP No. 274/2014

Pernod Ricard India (P) Ltd. APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2014) 10 MP CK 0068

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : S.K. Shrivastava, Advocate for the Appellant; Praveen Newaskar, Dy. Government Advocate, Advocate for the Respondent

Judgement

Sheel Nagu, J.—This order disposes of a bunch of petitions registered as Writ Petitions No.274/2014, 277/2014, 278/2014, 280/2014, 275/2014, 276/2014 and 279/2014. The issue involved in these petitions is the same.

2. This bunch of petitions involves three different kinds of only lodged but also filed alongwith the pleadings before the Excise Commissioner for claiming the benefit of proviso to Rule 19 (2) of the M.P. Foreign Liquor Rules, 1996 (for brevity "Rules of 1996"); second category of the cases is WPs No. 277/2014, 278/2014 and 280/2014 where no FIR was produced as the same was not available and instead a certificate issued by the Police Station concerned was brought on record to claim the abovesaid benefit; and the third and last category of the cases is WPs no.275/2014, 276/2014 and 279/2014 where no offence was registered, but the factum of accident of the truck carrying the liquor having taken place was reported to the Police Station concerned and the intimation in that regard has been brought on record not only herein but even alongwith the pleadings before the Excise Commissioner.

3. Learned counsel for petitioner assailing the orders passed by the Board of Revenue, Excise Commissioner and the Deputy Excise Commissioner contends that there has been no application of mind by way of a fact finding enquiry as to

whether the deficiency in excess of limits prescribed under Rule 16 of the Rules of 1996 was due to unavoidable circumstances beyond the control of the petitioner. It is submitted that despite the requisite material having been filed in shape of FIR/certificate issued by the Police Station concerned/intimation in regard to the accident to the Police Station, and the same having been brought on record, the Commissioner Excise has failed to exercise the jurisdiction vested in him under the proviso to Rule 19 (2) of the Rules of 1996. It is, thus, contended that in view of the above, the orders passed by all the three forums below are vitiated in law.

4. Learned counsel for State, on the other hand, relying upon the decision of the Single Bench of this Court rendered in the case of Pooja Marketing Agencies, Jabalpur Vs. Excise Commissioner, Gwalior, submits that the burden of establishing that the deficiency, in excess of limits prescribed under Rule 16 of the Rules of 1996, was occasioned by circumstances beyond the control of the petitioner, lies heavily upon the petitioner. It is the duty of the petitioner to prove to the satisfaction of the Excise Commissioner by producing material and cogent evidence that unavoidable circumstances or causes beyond the control of the petitioner occasioned the loss in excess of the prescribed limits under Rule 16 of the Rules of 1996. But, it is contended that the petitioner has failed to discharge this burden and, therefore the petition is liable to be dismissed.

5. For convenience and ready reference, the relevant provision, i.e., Rule 19 is reproduced below :-

"19. Penalties.- 1. Without prejudice to the provisions of the Act, or conditions No.4 of licence in Form F.L. 1, conditions No.7 of licence in Form F.L.2, condition No.4 of licence in Form F.L.3, the Excise Commissioner or the Collector may impose a penalty not exceeding Rs. 50,000 for contravention of any of these rules or the provisions of the Act or any other rules made under the Act or the order issued by the Excise Commissioner.

2. on all deficiencies in excess of the limits allowed under Rule 16 and Rule 17, the F.L. 9 or F.L. 9A, F.L. 10-A or F.L.10-B licensee shall be liable to pay penalty at a rate exceeding three times but not exceeding four times the maximum duty payable on foreign liquor at that time, as may be imposed by the Excise Commissioner or any officer authorised by him:

Provided that if it be proved to the satisfaction of the Excise Commissioner or the authorised officer that such excess deficiency or loss was due to some unavoidable cause like fire or accident and its first information report was lodged in Police Station, he may waive the penalty impossible under this sub-rule.

3. The Excise Commissioner or the Collector may suspend or cancel the licence under Section 31 of the Act upon a contravention of nay of these rules or provisions of the Act, or any other rules made under the Act, or the orders issued by the Excise Commissioner."

6. Considering the rival contentions of the parties and perusal of the original records of the Board of Revenue and as well as of the Excise Commissioner, it is crystal clear that in record before the Excise Commissioner; whereas in the other three cases, i.e., WPs No. 277/2014, 278/2014 and 280/2014, the certificate issued by the Police Station concerned certifying the accident having taken place, resulting into certain loss was produced by the petitioner; while in all other cases, a mere intimation by the petitioner having been made to the concerned Police Station about the accident, was brought on record before the Commissioner Excise.

7. True, it is that the provision contained in proviso to Rule 19 (2) of the Rules of 1996 mentions production of an FIR as a proof of the unavoidable circumstances of an accident leading to loss in excess of the prescribed limit as a condition precedent to exercise of discretion by the Excise Commissioner in favour of the person claiming benefit of the proviso, but the fact remains that the said proviso employs the term "accident" or "fire" as an illustration and not exhaustively. Thus, the term "First Information Report" mentioned in the said proviso also relates to one of the illustrative example of proof of "accident" or "fire". Thus, mere non-production of an FIR as proof of an accident cannot by itself be sufficient to render the person ineligible to seek benefit of the proviso to Rule 19 (2), provided some other cogent material or evidence is shown. Whether the material produced is cogent or not is for the competent authority to decide after holding a summary enquiry in which the least that is required is to comply with the principles of natural justice. It is only then that the discretion vested by the said proviso shall be treated to have been exercised in a fair and judicious manner eliminating the vice of arbitrariness from coming into play.

8. Thus, the respondents have adopted a pedantic approach that in absence of FIR, the discretion cannot be exercised in favour of the petitioner under the proviso to Rule 19 (2) of the Rules of 1996.

9. In the instant case, the nature of accident is not known. It was, thus, incumbent upon the Excise Commissioner to have embarked upon a fact finding enquiry on the material produced by the petitioner and, thereafter coming to a reasonable finding as to whether the deficiency in excess of the limits prescribed under Rule 16 of the Rules of 1996 is occasioned by an unavoidable circumstances or not. The impugned orders of the Board of Revenue as well as the Commissioner Excise are silent in this respect.

10. This Court at this juncture reminds itself of the fact that the M.P. Foreign Liquor Rules, 1996 and the M.P. Excise Act are meant to ensure maximum revenue to the State and therefore every clause prescribing exemption is to be strictly construed so that the same is not misused by anyone claiming exemption. Reference may be had to the decisions of the Apex Court rendered in State of Jharkhand and Others Vs. Ambay Cements and Another, and Topman Exports Vs. Commissioner of Income Tax, Mumbai, .

11. Reliance placed by the State counsel on the decision Pooja Marketing Agencies (supra) is of no assistance since the said decision does not relate at all to the penalty clause contained in Rule 19 (2) of the Rules of 1996.

12. In view of the above discussion, this Court is of the considered view that the Excise Commissioner has not exercised the discretion vested in him in the proviso to Rule 19 (2) of the Rules of 1996, in a lawful and judicious manner as recognized by the law.

13. Accordingly, all the petitions are allowed. The impugned orders passed by the Board of Revenue as well as the Excise Commissioner on 10.12.2013 (Annexure P/1) and 02.05.2013 (Annexure P/3) respectively are set aside. The Excise Commissioner is directed to conduct an enquiry into the fact as to whether the deficiencies in excess of the limits prescribed under Rule 16 of the M.P. Foreign Liquor Rules, 1996 as claimed by the petitioner occurred on account of circumstances beyond the control of the petitioner or not after giving due and sufficient opportunity to the petitioner and all concerned.

14. The parties are directed to appear before the Excise Commissioner, Gwalior on 18th . November, 2014.

15. Petitions are allowed to the extent indicated above.

16. No order as to cost.

