(2011) 07 BOM CK 0136

In the Bombay High Court

Case No : Writ Petition No.1714 of 2009

Rajendra Brijkishore Jaiswal APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Citation : (2011) 07 BOM CK 0136

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : S.V. Manohar and R.D. Wakode, for the Appellant; A.G. Mujumdar and A.K. Chaube, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—This writ petition challenges the order dated 23.12.2008,passed by the Minister,Department of State Excise,Mumbai,setting aside the order dated 12.10.1999,passed by the Collector,Washim and the order dated 31.7.2002, passed by the Commissioner,State Excise,Maharashtra State,Mumbai.

2. The Collector,Washim,had passed an order on 12.10.1999,rejecting the application for deletion of the name of the Petitioner fromF.L.-11 Licence. This was the subject matter of appeal before the Commissioner,State Excise,Maharashtra State,Mumbai. The Commissioner,State Excise,Maharashtra State,Mumbai,by his order dated 31.7.2002,dismissed the appeal maintaining the order of rejection of the application for deletion of the name of the Petitioner fromF.L.-11 Licence. Both the authorities have recorded the concurrent finding,that the partnership between the Petitioner and the Respondent nos.4 has not been dissolved and hence,the Collector,Washim,cannot take cognizance of the termination of the partnership and to delete the name of the Petitioner from the licence.

3. Inrevision,theMinister,Department of State Excise,Mumbai,has,recorded the

finding,that the dispute inrespect of the partnership,isrequired to be adjudicated by the competent Civil Court and hence,the said aspect,cannot be gone in to by him. However,keeping in view the revenue loss,the licence in the name of original licence holder Shri Bhagwan Bhawrilal Dagadia,has been restored without charging excise duty for the period of the closure of business. The Minister,Department of State Excise,Mumbai,has set aside the orders dated 12.10.1999 and 31.7.2002,passed by the Collector,Washim and the Commissioner,State Excise, Maharashtra State, Mumbai. This order is challenged in this writ petition.

4. The Minister,Department of State Excise, Mumbai, could not have set aside the order spassed by the Collector,Washim and the Commissioner, State Excise, Maharashtra State, Mumbai without setting aside the concurrent findings recorded that the partner ship between the Petitioner and the Respondent nos.4, has not been lawfully dissolved. In the reply filed by the Respondent nos.1to3, it is not disputed that the licence was granted originally to the Respondent nos.4 and that the Petitioner was included as a partner. The Petitioner was having 80% of share,while the Respondent nos.4 was having 20% of share. It is also not disputed that in the licence,the entries of the partners were accordingly taken.

5. Section 40(1A) of the Bombay Foreign Liquor Rules,1953,in Appendix 2, states that except with the previous anction of the [Collector],no person recognized as partner under sub-rule(1) shall beallowed to with draw from the partner ship and to have his name as partner deleted from the licence. Thus, the proceedings in question are under the provisions of Section 40(1A) of the said Rules and the Collector is empowered to adjudicate the dispute, whether the name of the Petitioner should be deleted from the licence. The Minister,Department of State Excise, Mumbai, has, therefore,committed an error in holding, that the dispute is required to be adjudicated by the competent Civi lCourt. The Minister,should have dealt with the findings recorded by the authorities below,on its own merits. In the absence of the findings on relevant aspects of the matter,the order can not be sustained and the matter will have to be sent back to the Minister,Department of State Excise, Mumbai, for deciding the matter a fresh.

6. In the result, the writ petition is allowed. The order dated 23.12.2008, passed by the Minister,Department of State Excise, Mumbai, is here by quashed and set aside. The matter is remitted back to the Minister,Department of State Excise,Mumbai,for decision a fresh in accordance with law. There shall be no order as to costs.

