(1996) 11 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 5203 of 1996

Rajkumar D. Govindani APPELLANT

Vs

The Collector of Pune and Others RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Bombay Prohibition Act, 1949 — Section 54(1)
Evidence Act, 1872 — Section 114
Penal Code, 1860 (IPC) — Section 107, 108, 34

Citation : (1997) 2 BomCR 633 : (1996) 98 BOMLR 681

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Veena B. Thadani, for the Appellant; V.M. Parsurami, Assistant Government Pleader for respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—Rule Returnable forthwith. Mr. Parsurami, Assistant Government Pleader waives service for respondents No. 1 to 3. By consent writ petition is heard finally.

2. The petitioner in the present writ petition filed under Articles 226 and 227 of Constitution of India questions the correctness of the order dated 24-7-96 passed by the Collector, Pune suspending petitioner''s FL-I licence u/s 54(1)(a) of the Bombay Prohibition Act, 1949, and, the order passed by the Commissioner of State Excise, Maharashtra State, Mumbai dated 4-10-96.

3. The petitioner states that he carries on business of wholesale foreign liquor and was granted FL-I licence under the provisions of Bombay Foreign Liquor Rules, 1953 framed under the Bombay Prohibition Act, 1949. It appears that the petitioner purchased 500 boxes of foreign liquor from M/s. Amit Wine Agencies on 4th August-1995. According to petitioner these 500 boxes were sent to him by M/s. Amit Wine Agencies on bill accompanied by transport pass No. 386 dated 4th August 95. The transport pass was signed by officer posted at M/s. Amit

Wine Agencies and was received by petitioner''s employee posted at his godown. The bill for supply of 500 cases also contained a certificate in Form-B.B. stating that duty has been paid.

4. The inspector, State Excise Division, Flying Squad, Kokan Division, Thane raided house No. 1131 situate behind Konegaon Police-Station, Ramji Saoji Compound, Mauje Konegaon on 28-11-95 at 10 a.m. and found 500 cases of National Doctor Reserve No. 1 Brandy in the custody of the petitioner. A Case No. 159/95 has been registered under the provisions of section 66(1)(b), 65, 81, 83 and 108 of the Bombay Prohibition Act, 1949 against the petitioner. According to State Excise authorities, the said stock of 500 cases did not appear to be official by paying all taxes. Accordingly, Collector, Pune in exercise of his powers u/s 54(1)(a) of the Bombay Prohibition Act, 1949 suspended the licence granted to the petitioner from the date of the order dated 24-7-96 to 31-3-1997. The appeal was preferred by the petitioner before the Commissioner of State Excise aggrieved by the order of Collector and the appeal authority also by the impugned order dated 4-10-96 maintained the order passed by the Collector.

5. Mrs. Thadani, learned Counsel appearing for the petitioner contends that the stock of foreign liquor of 500 cases was purchased by the petitioner from M/s. Amit Wine Agencies on bill accompanied by transport pass and certificate in Form-B.B. that duty has been paid, and, the petitioner was not liable to make any payment of duty and, therefore, the licence could not be suspended by the Collector u/s 54(1)(a) of the Bombay Prohibition Act.

6. Mr. Parsurami, learned Assistant Government Pleader does not dispute that the licence has been suspended by the Collector, Pune in exercise of his powers u/s 54(1)(a) only. But he submits that since there was evasion of excise duty by the petitioner in collusion with M/s. R.T. Traders and M/s. Amit Wine Agencies, it cannot be said that the Collector acted beyond his jurisdiction in suspending the licence.

7. I have considered the contentions raised by the learned Counsel for the parties and also perused the order passed by the Collector, Pune on 24th July-96 and the order passed by Commissioner of State Excise on 4-10-1996.

8. The principal reason assigned by the Collector, Pune in suspending the licence as well as in the order passed by the Commissioner of State Excise in appeal is that the petitioner had purchased the 500 cases of foreign liquor on too lower a rate and that showed that the petitioner was aware that duty on the goods was evaded and the petitioner having knowingly and wilfully purchased these goods on much cheaper rate than the cheapest brand of Indian made foreign liquor, he connived and abetted the offence of duty evasion and, therefore, licence was liable to be suspended u/s 54(1)(a) of the Bombay Prohibition Act.

9. Section 54 of the Bombay Prohibition Act reads thus :

"Section 54(1). The authority granting any licence, permit, pass or authorization under this Act may for reasons to be recorded in writing cancel or suspend it,

(a) If any fee or duty payable by the holder thereof is not duly paid;-----".

10. Power to cancel or suspend the licence, permit, pass or authorization granted to a person could be exercised by the Competent Authority if any fee or duty payable by the licence holder has not been duly paid. Meaning thereby if the licence holder fails to pay any fee or duty payable by him, the authority who granted such licence, permit, pass or authorization may suspend or cancel the same after recording the reasons in writing cancellation and/or suspension of licence, permit, pass or authorization affects vitally the rights of licencee and therefore such action must squarely fall within the power conferred on such authority. If the alleged act, omission or commission on the part of licence holder under the Act cannot form basis for exercise of power for cancellation or suspension of licence u/s 54 of the Bombay Prohibition Act, obviously the licence cannot be cancelled or suspended on that ground. Petitioner admittedly is purchaser of the disputed foreign liquor from M/s. Amit Wine Agencies. There is no dispute that no excise duty is liable to be paid by the purchaser and, therefore, the petitioner who is licence-holder was not liable to pay excise duty on the 500 cases of foreign liquor purchased by him from M/s. Amit Wine Agencies. How can the petitioner who had purchased the goods at cheaper rate than the cheapest brand of Indian made foreign liquor could be said to have not paid fee or duty payable by him. I am afraid u/s 54(1)(a), the licence cannot be cancelled or suspended by Competent Authority on the ground that the foreign liquor was purchased by licence holder knowingly and wilfully at much cheaper rate than the cheapest brand of Indian made foreign liquor. The reasons given by appeal authority that petitioner has connived and abetted the offence of duty evasion also cannot support the suspension of licence u/s 54(1)(a). The licence holder may be prosecuted in accordance with law for having connived and abetted the offence of excise duty evasion and any other suitable action may be taken against him, but that cannot furnish a justifiable ground for suspension of licence u/s 54(1)(a). It is only if any duty or fee payable by the licence holder is not duly paid by him, power can be exercised by the Competent Authority to cancel or suspend the licence u/s 54(1)(b) and, therefore, in my view, from the reasons stated in the order passed by Collector, Pune, the order of suspension of petitioner''s licence cannot be sustained. For the self-same reasons, the order passed by the appeal authority is also liable to be set-aside.

11. For the reasons aforesaid, writ petition is partly allowed. The order passed by the Collector, Pune dated 24-7-96 and the order passed by Commissioner of State Excise dated 4-10-1996 are quashed and set aside. It is, however, made clear that it would be open to the concerned authorities to proceed in accordance with law against the petitioner for the offences already registered against him, and , those proceedings shall not be influenced by the present order. It would open to the authorities to take any other suitable action against the petitioner in accordance with law for any contravention of licence or law.

12. Rule is made absolute in aforesaid terms. No costs.

