(2022) 05 GAU CK 0056

In the Gauhati High Court

Case No : Criminal Petition No. 431 Of 2021

State Of Assam And Anr — APPELLANT

Vs

Anil Kumar Agarwalla And Anr. — RESPONDENT

Date of Decision : 31-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Criminal Procedure, 1973 — Section 41(a), 482
Assam Excise (Amendment) Act, 2018 — Section 53(1)(a)
Assam Excise Act, 2000 — Section 53, 71, 74, 75

Citation : (2022) 05 GAU CK 0056

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : D. Gogoi, P.J. Saikia, A.K. Gupta

Final Decision : Dismissed

Judgement

1. Heard Mr. D. Gogoi, learned Standing Counsel, Excise Department, Govt. of Assam, representing the petitioners. Also heard Mr. P.J. Saikia, learned counsel appearing for the respondents.

2. By filing this application under Section 482 of the CrPC, read with Article 227 of the Constitution of India, the State of Assam, as petitioner no.1 and one of its officer as petitioner no.2 have sought for quashing and setting aside the order dated 17.07.2021, passed by the learned Sessions Judge, Dibrugarh in Crl. Revision No.15(3)/2021, whereby the custody/zimma of the seized vehicle as well as the consignment of 1000 cases of rum/whiskey have been granted de hors the provisions of the Assam Excise Act, 2000.

3. The case of the parties, in brief is that, on 11.06.2021, at about 6:30 A.M., the Dibrugarh Excise team led by the Deputy Superintendent of Excise, intercepted a truck bearing Registration No.AS 06 AC 8975, based on sourced information, near Jamira in Dibrugarh District. The truck was carrying 1000 cases of IMFL from M/s. Angels Share Enterprises, Likabali, Arunachal Pradesh, to M/s.

New World Wine, Longding, Arunachal Pradesh, as per the documents related to the consignment. However, upon physical verification, the consignment was found comprising of 1008 cases of IMFL. As, the physical stocks of the consignment and the recorded figures in the documents of the consignment were found not matching each other, the truck along with the consignment of 1008 cases of IMFL was seized and Dibrugarh Excise Case No.DBR-12/21 was registered in connection with the aforesaid case under Section 53(1)(a) of the Assam Excise (Amendment) Act, 2018.

4. The seized vehicle as well as the liquor were produced before the learned CJM, Dibrugarh. The seized liquor and the vehicle was directed to store at the licensed warehouse premises of M/s. Royal Paradise Wholesale Warehouse, Dibrugarh.

5. On 19.06.2021, a zimma petition for custody of the vehicle and the IMFL was filed by Anil Kumar Agarwalla, on the strength of a power of attorney executed by license holder Chinknga Wangpan before the learned SDJM (S), Dibrugarh. On the basis of which, the learned court called for a report from the I.O., pursuant to which, a status report was submitted by the I.O. before the Court, on 24.06.2021. In the said report, it was stated that the ownership of the consignment of IMFL could not be properly ascertained. It was also stated in the report, that in spite of issuance of notice under Section 41(a) of the CrPC, the accused persons have not appeared before the I.O. and stated that further investigation of the matter is required to be carried out.

6. On receipt of the status report, learned court on 24.06.2021 rejected the zimma prayer of the applicant(s). However, in a criminal revision preferred before the learned Sessions Judge, Dibrugarh, vide Crl. Revision No.15(3)/2021 and by the impugned order dated 17.07.2021, the custody/zimma of the seized vehicle as well as the seized IMFL have been granted to the respondents.

7. Being highly aggrieved by the said order of the learned Sessions Judge, Dibrugarh, present petition has been preferred contending that handing over custody of an illegal intoxicant to the persons who has committed the offence, will result in releasing the same into the market and will defeat the provisions of the Act itself. Moreover, Section 71 of the Act raises the presumption, that any person who is found in possession of intoxicant for which he cannot give any satisfactory explanation shall be presumed to have committed an offence under the Act unless the contrary is proved. Therefore, custody/zimma of an illegal intoxicant involved in an offence under the Assam Excise Act, 2000 cannot be handed over to the accused as a matter of routine and should be subject to the procedure laid down under Section 75 of the Act.

8. It is also contended by the petitioners that as regard custody and disposal of seized property, special provision has been made with regard to confiscation and disposal of intoxicants, which has been clearly laid down under Sections 74 & 75 of the Assam Excise Act, 2000, which vested specific powers upon the District

Collector to confiscate any article seized under the Act, when it appears to him that an offence under the Excise Act has been committed. As such, when the investigation is still continuing, granting custody of the illegal intoxicants to the accused person or his representatives will render the aforesaid powers completely infructuous and redundant. Accordingly, the petitioners sought for setting aside the order passed by the learned Sessions Judge, Dibrugarh and to pass any other order/orders, as deemed fit and proper to this Court.

9. I have heard the submission of learned counsel for both sides and perused the record.

10. It is discernible from the matters on record that the applicant no.2 (Sri Chinkga Wangpan) purchased 1000 cases of whisky and Rum of different brands from M/s. Angel Share Enterprises, Likabali, Lower Siang district, Arunachal Pradesh amounting to Rs.12,22,135/- including tax. The applicant no.2 on 11.05.2021 vide treasury challan no.652 dated 11.05.2021 paid an amount of Rs.3,02,400/- as Excise duty for purchase of the aforesaid goods and accordingly the Supt. of Tax & Excise, Longding District, Arunachal Pradesh issued pass for import/transport of IMFL vide Permit no.337 dated 17.05.2021 by mentioning the route as Likabali to Longding/Kanubari via Assam. Accordingly, the Excise Officer-in-Charge, M/s. Angels Share Enterprises, Likabali, Lower Siang, Arunachal Pradesh issued the pass vide Excise Pass no.EX-ASE/21-22/026 dated 10.06.2021 and M/s. Angel Share Enterprises also issued the tax invoice vide Invoice No.ASE/026.

11. The search and seizure was made, primarily on two counts, firstly- the ownership of the consignment could not be ascertained and secondly- the figures mentioned in the documents were not matching. Learned trial court refused the prayer of zimma on the report given by the I/O as stated above for the interest of further investigation. The learned revisional court, has however, set aside the order of the learned trial court by the impugned order dated 17.07.2021.The relevant portion of the order is reproduced hereinbelow:

"Now coming to this instant case, the record of Tengakhat Excise Case No.13/2021 was called for and gone through the same. There is no FIR in the case record and the forwarding dtd. 14-06-2021 mentions it as forwarding and complaint report in the heading. In the reference column, Dibrugarh Excise Case No.12/2021 under Section 53 (1) (a) of Assam Excise Amendment Act, 2018 is mentioned. The only allegation appearing from the forwarding is that the consignment was of 1000 cases of IMFL, but on physical verification, 1008 cases recovered. There is no other allegation in the forwarding.

Copy of the license for IMFL/Beer Wholesale Vend in the name of Sri Chinknga Wangpan issued by the Govt. of Arunachal Pradesh from the Office of Commissioner of Tax, Itanagar is enclosed with this revision petition and this renewed upto 13-10- 2021. Sri Chinknga Wangpan has enclosed a General Power of Attorney in the name of Sri Anil Kumar Agarwal to carry on his business of liquor in the name of M/s. New World Wine for which M/s New World Wine was issued license. The vehicle bearing registration No.AS-06-AC-8975 is in the name of Sri Anil Kumar Agarwal. Copy of the permit, RC and insurance Policy in the name of Sri Anil Kumar Agarwal are enclosed with the revision petition.

It is more than a month since the seizure of the truck and rum/whisky boxes on 11- 06-2021 and from the facts and circumstances of the case, detention of the truck for the purpose of investigation is not felt necessary.

As regard the seized 1008 cases (boxes) of Rum and Whisky bottles, the petitioner has produced the requisite documents for 1000 cases (boxes). The 1000 boxes of Rum/Whisky has been specifically brand wise has been mentioned in the Challan of M/s. Angels Share Enterprise against M/s. New World Wine, duly checked and passed by the Excise Officer.

Considering the mater in its entirety, the impugned order is found to suffer from illegality in rejecting the jimma prayer. Hence, same is interfered with and this revision is allowed.

The Deputy Superintendent, Excise Department is hereby directed to release the seized truck bearing registration No.AS- 06-AC-8975 to the registered owner Sri Anil Kumar Agarwal and 1000 cases (boxes) of seized rum/whisky out of 1008 cases (boxes) to the revision petitioner Sri Anil Kumar Agarwal after verifying the documents and obtaining a zimmanama incorporating the bond for Rs.5,00,000/- for the truck and Rs.12,50,000/- for the 1000 cases (boxes) of rum/whisky bottles."

12. It reflects from the documents submitted by the respondents' side that Chinknga Wangpan is a resident of Senewa village within the jurisdiction of Longding police station in the district of Longding, Arunachal Pradesh and is a proprietor of M/s. New World Wine, and he appointed Anil Kumar Agarwal (respondent no.1) as his attorney by way of General Power of Attorney to act on his behalf. They have produced certain documents by way of Interlocutory Application (whereby they sought for vacation of the interim order passed by this Court) which has already been mentioned as above. The documents reveals that M/s. New World Wine have all the necessary documents to carry out the business of IMFL and transit the same as indicated in the challan. So far as regard the vehicle (bearing registration no.AS-06-AG-8975) which was used for transportation of the consignment/IMFL cases, the respondents has produced series of documents vide Annexure-B series reflecting that R/C of the aforesaid seized vehicle stood in the name of Mr. Anil Kumar Agarwal and the vehicle is under insurance coverage and also have the valid permit w.e.f. 10.02.2021 to 09.02.2026.

13. None of the above documents has been denied or challenged by the petitioners' side, so there is no rebuttal as regard having requisite documents by the respondents' side while carrying such seized IMFL. The driver of the vehicle who was apprehended at the time of transportation may not be able to produce

all the relevant documents for examination by the officials of Excise Department for which the vehicle along with IMFL bottle were seized. But all these relevant documents were already pressed into before the revisional court and the revisional court has discussed all the above documents while giving the zimma to the respondents. The revisional court has also taken into consideration of the fact that as permit issued for carrying of 1000 cases of IMFL, so the respondents’ are entitled to those one thousand cases instead of 1008 cases along with the vehicle on the basis of documents so produced. The impugned order of the learned revisional court is found to have been passed with sound discretion, good reason, basing on the documents on record. Only, because finding of 8 cases above the amount permitted in the challan, which can be attributed to the conduct of the driver of the vehicle but in releasing remaining portion of the seized IMFL there cannot be any dispute. The I/O although has indicated in its report that they have issued a letter to the Commissioner of Excise, Arunachal Pradesh regarding genuineness of the aforesaid permit etc. vide letter dated 24.06.2021, but till date, nothing concrete has emerged that such permit was not issued from their end. In that view of the matter, nothing remains to raise doubt upon the documents relied by the respondents’ side.

14. There appears nothing on the face of the documents produced by the respondents’ side to sustain the contention raised by the petitioner that such IMFL was carried illegally by the respondents. On the other hand, the documents indicates that the aforesaid articles were not for sale in Assam but it was transported from one district to another district of Arunachal Pradesh via Assam and it is a case of transportation only under Section 74 of the Excise Act. Section 53 of the Assam Excise Act, 2000 provides penalty for unlawful import, export, transport, manufacture, possession, sale etc. In the present case, the vehicle was apprehended while transporting articles (IMFL). What has been gathered from the matters on record, that the respondents have all the requisite documents while transporting articles, save and except some discrepancy as regard the 8 cases dockets.

15. This court is of the opinion that the learned revisional court has rightly passed the order basing on the documents in proper perspective of law which calls for no interference.

16. Resultantly, the present petition stands dismissed with a direction to the I/O to release the vehicle and the seized articles to the respondents forthwith as indicated above by the revisional court.

Interim stay order also stands vacated.

