(2002) 07 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 5387 and 6493 of 2000

V. Narayana Rao APPELLANT

Vs

State of A.P. and Others RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:
Andhra Pradesh Excise Act, 1968 — Section 45

Citation : (2002) 6 ALD 163 : (2002) 2 ALD(Cri) 35 : (2002) 5 ALT 91

Hon'ble Judges : Ar. Lakshmanan, C.J;Ghulam Mohammed, J;G. Bikshapathy, J

Bench : Full Bench

Advocate : M.Y. Ratnakar, in WP No. 5387 of 2000, for the Appellant; M.Y. Ratnakar, in WP No. 6493 of 2000 and Government Pleader for Prohibition and Excise for Respondent Nos. 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

Ar. Lakshmanan, C.J.—Writ Petition No. 5387 of 2000 was filed to quash the order of the 2nd respondent dated 22-2-2000 and arising out of the order dated 17-9-1999 in Rc.No. B3/2234/98 passed by the 3rd respondent and to declare them as arbitrary, discriminatory and illegal. Originally the writ petition was filed only to quash the impugned orders dated 22-2-2000 and 17-9-1999. During the pendency of the writ petition the petitioner moved the State Government by filing a revision purported to be u/s 64 of the A.P, Excise Act, 1968 (for short ''the Excise Act''). The said revision petition was dismissed by the Government, which is also now impugned in this writ petition by way of amendment.

2. Writ Petition No. 6493 of 2000 was filed by East India Transport Agency impleading the State of Andhra Pradesh and five others. The writ petitioner in Writ Petition No. 5387 of 2000 was also impleaded as the 6th respondent as per the Court order dated 14-2-2001 in WPMP No. 3112 of 2001. The said writ petition was filed to quash the order dated 22-2-2000 insofar as it confirms the confiscation of the IML which was seized along with lorries bearing Nos.AP 12T 2921 and AP 16T 1512 as arbitrary, illegal, null and void and consequently to

direct the respondents to deliver the consignment of Indian made liquor to the petitioner. The goods were ordered to be released by this Court on 15-2-2001 on the petitioner furnishing a bank guarantee for Rs. 5,00,000/-.

3. We shall now deal with the first Writ Petition No. 5387 of 2000 filed by the owner of the vehicle. According to the petitioner he purchased the lorries by obtaining finance from Sundaram Finance Company Limited. The lorries are under hypothecation to the said finance company. The petitioner is running the lorries on hire basis to various parties including East India Transport Agency (petitioner in Writ Petition No. 6493 of 2000). On 26-10-1998 the petitioner entered into an agreement with Calcutta based transport company known as East India Transport Agency (petitioner in writ petition No. 6483 of 2000) for transporting Indian made liquor manufactured by International Distilleries (India) Limited, from Daman to Assam. The consignment contained about 33257 EVIL bottles. The lorries were being driven by the petitioner and his father and both of them are licensed to drive heavy duty vehicles. According to the petitioner the following documents were available for transportation of the consignment viz:

(i) Administration of Daman and Diu, Department of Excise permit No. 747/98 and 748/98-99 dated 15-9-1999 valid upto 29-10-1998 for the two lorries.

(ii) Government of Assam, office of the Commissioner of Excise, Assam Import Permit No. 111-74/96-97/23818 and 111-74/ 96-96/23828 dated 31-8-1998 for the two lorries and the permits not transferable and valid for two months from the date of issue.

(iii) Khamani Distilleries Private Limited invoice No. IMFL/98-99, 606 and IMFL/ 98-99-604, dated 26-10-1998 for the two lorries.

(iv) From TTP No. 00/1555/1750/98 and 0015567 1791/98 dated 27-10-1998 Maharashtra State.

(v) Receipt Nos. 1295194 and 1295195 dated 31-10-1998 issued by the Assistant Commercial Tax Officer, Chiragpally check post.

4. The consignment was lifted from Daman and it passed through the State of Gujarat and Maharashtra. It is further submitted that the route to Assam through Madhya Pradesh is being avoided by all the transporters due to delays, security risks and hilly terrain. Therefore, it was decided to transport the consignment through Andhra Pradesh and West Bengal. When the lorries reached Andhra Pradesh border from Maharashtra the consignment was checked at the Zaheerabad check post by the concerned officials and it was allowed to pass through. As the consignment passed through the check post the petitioners were under the bona fide impression that no further documentation or permission was required for transportation through the State of Andhra Pradesh. When the consignment reach Vijayawada on 4-11-1998 en route to Assam the lorries were seized by the Manger of Sundaram Finance Company and he did not allow the lorries to move. The lorries were kept in the compound of the said finance

company. It appears that the said finance company which is the financier has repossessed the vehicles for non-payment of the instalments. While so on 17-11-1998 at 5.00 p.m., the Station House Officer, Vijayawada along with staff and mediators visited the company and conducted search proceedings. The lorries and the consignment were seized under the cover of panchanama on the ground that the petitioner did not produce "through transport permit (TIT) to pass through the State. Thereupon the 3rd respondent issued a show-cause notice calling upon the petitioner to explain why the lorries should not be confiscated. The petitioner submitted a reply raising objections and opposing confiscation. However, the 3rd respondent, without considering the objections raised by the petitioner, ordered confiscation of the lorries by order dated 17-9-1999. Aggrieved by the said order the petitioner filed the statutory appeal before the 2nd respondent u/s 63 of the Excise Act. The 2nd respondent also dismissed the appeal by order dated 22-2-2000. As stated earlier, the petitioner preferred a revision purported to be u/s 64 of the Excise Act. The Government of Andhra Pradesh in Revenue (Excise III) Department by G.O.Rt. No. 76, dated 18-1-2002 for the reasons recorded in the said order rejected the same. Since the said order was passed during the pendency of the writ petition we permitted the writ petitioner to file an application for amendment which was ordered by us today to include the prayer to quash the proceedings of the Government in G.O. Rt. No. 76, dated 18-1-2002.

5. Thus the petitioner filed the above writ petition to quash the orders dated 18-1-2002, 22-2-2000 and 17-9-1999 and to grant other consequential reliefs.

6. Writ petition No. 6493 of 2000 was filed by the East India Transport Agency for the prayer extracted above. The writ petition was filed to quash the order dated 22-2-2000 passed by the 2nd respondent in so far as it purports to uphold the order of the 3rd respondent dated 17-9-1999 confiscating IML bottles together with the lorries on the ground that the owner of the lorries was not carrying TTP, It is submitted that the petitioner is a well reputed transport company having registered office at Calcutta and branches in various places and they are running the business of common carrier. It is stated that M/s. Khamani Distilleries Private Limited, Daman entrusted a consignment of ML on 26-10-1998 to the petitioner for transporting from Daman to Gauhati. The said consignment was worth Rs. 15,00,000/-, Since the petitioner could not engage their own lorries for transportation of the consignment they entered into an agreement with V. Narayan Rao the petitioner in writ petition No. 5387 of 2000 who is the owner of the lorries AP 12 2921 and AP 16T 1512 for transportation of the consignment from Daman to Gauhati. The consignment was loaded in the lorries and it was supported by necessary documents referred to above. We have already referred to the other relevant facts in the other writ petition. Hence, we are not again referring the averments made in the present writ petition.

7. The petitioner herein has also challenged the action of the respondents on the ground that no notice was issued to the writ petitioner. It is submitted that the

impugned orders in so far as they purport to confiscate the consignment of IML is erroneous and aggrieved by the same the present writ petition was filed.

8. We heard the learned Counsel appearing for the writ petitioners and also the learned Government Pleader. We had given our anxious consideration. We have also perused the orders which are impugned in these writ petitions. In our opinion the authorities have failed to see that the petitioner loaded the consignment in Daman with necessary supporting documents and the same passed through the States of Gujarat and Maharashtra and also the State check post at Zaheerabad and as such the petitioners who are the owners of the lorries are innocent and they had no intention to violate any regulations. The authorities ought to have seen that if any TTP was required to be obtained it ought to have been insisted upon at the Zaheerabad check post itself, for failure of which the petitioner, in our opinion, cannot be penalized. It is relevant to point out that when the consignment entered the State of Maharashtra the check post at the border of Maharashtra issued TTP and similar procedure ought to have been followed at the border check post by the Andhra Pradesh State excise officials. It is not in dispute that the liquor is duty paid and they are supported by all necessary documents except TTP which is a mere technicality and hence we are of the opinion that there is no mala fide intention on the part of the petitioner to consciously or deliberately violate any regulation. As rightly contended by the learned Counsel for the petitioner, the petitioner was totally unaware of the necessity to obtain any TTP and his ignorance ought to have been considered before passing the extreme order of confiscation. The authorities have also noticed that it was nobody''s case that the petitioner was trying to do business by indulging in illegal means and therefore mere failure to obtain TTP does not indicate any mala fide intention on the part of the petitioner. The extreme order of confiscation, in our opinion, is not warranted in this case and in our opinion it is grossly disproportionate. The law providing for confiscation in an appropriatory legislation and the same is to be strictly construed. Before an order of confiscation is passed, the authority must satisfy itself that all the ingredients therefore are satisfied keeping in view the proposition of law in mind that confiscation is deprivation of property and existence of mens rea is also an essential ingredient and play a vital role in such matters. Though these contentions were specifically raised before the authorities, the same have not been considered at all in proper perspective. The investigation report of the Sub-divisional officer, Vijaywada also revealed that there is no route mentioned in the import permit by the Assam Government. We have also perused the explanation submitted by the petitioner who is the owner of the lorries to the letter dated 30-6-1999. It has been clearly stated in the said explanation that the only mistake committed by the petitioner is that he has entered Andhra Pradesh without TTP and had the check post authorities at Zaheerabad wanted TTP, they would not have entered Andhra Pradesh without TTP. Neither the transporting agency nor the distillery has instructed the petitioner to take TTP from Andhra Pradesh State for passing through the State. Further, there is no route prescribed

in the permit. Still they have passed through Maharashtra State after obtaining a TTP of that State. When the route is not prescribed in the permit it is always open to the petitioner to take the lorry in any route according to their convenience. In the absence of prescription of any route and after passing through the exit check post of Maharashtra State the petitioner entered Andhra Pradesh through Zaheerabad check post which is the nearest to enter Andhra Pradesh. As already noticed the stocks are duty paid and the transaction in question is a genuine one under valid permit. It is also not the intention of the petitioners to dump the stocks in Andhra Pradesh and there is no evidence to the said effect. In the light of the submissions made in the explanation submitted by the petitioners the authorities ought to have released the stock along with lorries. However, they failed to do so which compelled the petitioner to file the appeal before the 2nd respondent and also a revision before the State Government and again the present writ petitions before this Court.

9. In our opinion the authorities ought to have considered the provisions of the Excise Act in proper perspective. There is no mens rea to commit the offence on the part of the petitioner which is one of the relevant consideration before ordering confiscation and seizure of the vehicle. In the instant case we hold that mens rea is totally absent. Therefore, there cannot be an order of confiscation of the goods or the vehicle. We, therefore, allow bom the writ petitions and quash the impugned orders in both these writ petitions. The security or bank guarantee, if any, furnished by the petitioners in both the writ petitions shall be released forthwith. Since we decided the case on facts and circumstances of the case we do not propose to answer the reference made by the learned single Judge. The writ petitions are accordingly allowed. No costs.

