(2013) 07 KAR CK 0339

In the Karnataka High Court

Case No : Writ Petition No. 28963 of 2011

Y.R. Manohar APPELLANT

Vs

The Excise Commissioner, The Deputy Commissioner and The Deputy Commissioner of Excise RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:
Karnataka Excise Act, 1965 — Section 61(2), 61(3)

Citation : (2013) 07 KAR CK 0339

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : G.K. Bhat, for the Appellant; T.K. Vedamurthy, HCGP, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—Petitioner held CL-7 licence for the year 2010-11 to run business at premises Nos. 3, 4, 5 and 6 in Sy. No. 289/1 and 319/3 of Kodavur Village, Malpe Beach in Udupi Taluk. He had submitted an application and sought approval of new blue print to provide an additional bar counter in the licenced premises. The same was rejected by the 2nd respondent on 11.10.2010, vide Annexure-B. The rejection was questioned by filing an appeal under S. 61(2) of the Karnataka Excise Act, 1965 before the 1st respondent. By an order dated 31.03.2011 vide Annexure-A, the appeal having been dismissed, this writ petition was filed on 29.07.2011, to quash the orders passed by the respondents, as at Annexures-A and B and for directing the respondents to approve and modify the blue print submitted by the petitioner vide Annexure-D. This writ petition was dismissed as not pressed on 28.02.2013. However, in view of I.A. No. 1/2013 filed for recalling of the said order stating that on account of a mistake, a submission was made as to dismiss the petition as not pressed, the affidavit of the learned advocate having been taken on record, by an order dated 07.06.2013, I.A. 1 was allowed and the aforesaid order dated 28.02.2013 was recalled.

2. Sri T.K. Vedamurthy, learned HCGP by taking me through the statement of objections filed on 05.06.2012 submitted that the writ petition is not maintainable since the petitioner has an alternative, efficacious statutory remedy to file an appeal under S. 61(3) of the Act and that the impugned orders can be questioned in an appeal before the Karnataka Revenue Appellate Tribunal. He submitted that in the circumstances, the writ petition may be rejected.

3. Sri G.K. Bhat, learned advocate for the petitioner did not dispute the contention of the learned HCGP. However, he submitted that since the petitioner was advised to approach this Court invoking writ jurisdiction in view of the requirement of interpretation of statute, this writ petition was filed. Learned counsel submitted that in the facts and circumstances of the case, the appeal remedy being not efficacious the writ petition may be entertained to consider the contentions raised as against the impugned orders. Having heard the learned counsel on both the sides, there being no dispute that an appeal could be preferred before the KRAT as against the impugned orders, under S. 61(3) of the Act, in my opinion, this writ petition is not maintainable for non exhaustion of alternative statutory remedy, which is efficacious. Whether the findings recorded by the respondents in the impugned orders are justified or not can be examined in an appeal by the Tribunal. An appeal can lie both on questions of fact and law. In view of the stand taken in the statement of objections filed to this writ petition on 05.06.2012, findings on facts are required to be recorded, which can be done in an appeal by the Tribunal. In the circumstances, the writ petition is not maintainable for non exhaustion of statutory remedy.

In the result, writ petition is rejected as not maintainable, reserving the liberty to the petitioner to prefer an appeal as against the impugned orders within a period of two weeks.

If an appeal is filed within the said period, the time spent in prosecuting this writ petition from 29.07.2011 till date shall stand excluded upon an application seeking condonation of delay being filed along with the appeal.

All the contentions raised in this appeal are left open for consideration by the Appellate Tribunal.

No costs.

