(113)

**न्यायालय राजस्व मण्डल, मध्यप्रदेश, ग्वालियर**

समक्ष: **मनोज गोयल**

अध्यक्ष

प्रकरण क्रमांक पीबीआर/अपील/ग्वालियर/आ.अ./2017/3210 विरूद्ध आदेश दिनांक 3-8-17 पारित द्वारा आबकारी आयुक्त, मध्यप्रदेश, ग्वालियर अपील प्रकरण क्रमांक आर.ई.सी./64/16-17.

---

मेसर्स ग्वालियर एल्कोब्रू प्रा.लि.
रायरू फार्म आगरा मुंबई रोड, ग्वालियर
द्वारा जनरल मैनेजर
पी.बी. मुरलीधरन पुत्र स्व. व्ही.व्ही.एस नाम्बीशान
निवासी रायरू फार्म, ग्वालियर .....अपीलार्थी

**विरूद्ध**

1. आबकारी आयुक्त, मोतीमहल, ग्वालियर
2. उपायुक्त आबकारी, उड़नदस्ता, ग्वालियर .....प्रत्यर्थीगण

---

श्री आशीष शर्मा, अभिभाषक अपीलार्थी
श्री प्रखर ढेंगुला, अभिभाषक, प्रत्यर्थीगण

---

**:: आ दे श ::**

**(आज दिनांक 17/9/18 को पारित )**

अपीलार्थी द्वारा यह अपील म.प्र. आबकारी अधिनियम, 1915 (जिसे संक्षेप में केवल अधिनियम कहा जायेगा) की धारा 62 (2)(सी) के अन्तर्गत आबकारी आयुक्त, म.प्र. ग्वालियर द्वारा पारित आदेश दिनांक 3-8-17 के विरूद्ध प्रस्तुत की गई है ।

2/ प्रकरण के तथ्य संक्षेप में इस प्रकार हैं कि अपीलार्थी मेसर्स ग्वालियर एल्कोब्रू प्रा.लि रायरू जिला ग्वालियर से परमिट क्रमांक आर.एस. 3/317/20 एवं 318/21 दिनांक 25-9-2008 से टैंकर क्रमांक यू.पी. 53-टी-7119 द्वारा प्रत्येक पारेषण में 20 हजार ब्लक लीटर कुल 40 हजार बल्क लीटर, जिसका पी.एल. 68280 ग्रेन ई.एन.ए. का निर्यात मेसर्स करनॉक डिस्टलरी प्रा.लि. पानीखेड़ा गुवाहाटी किया गया था। महालेखाकार के अंकेक्षण दल द्वारा निरीक्षण अवधि 12/2007 से 12/2008 की कंडिका 4(क) में निर्यात किये गये ई.एन.ए की 47805.28 प्रूफ लीटर कमी सत्यापन होने पर रूपये 27736520/- मार्गहानि की शास्ति

संगणित किये जाने पर सहायक आबकारी आयुक्त जिला ग्वालियर द्वारा उपायुक्त आबकारी, संभागीय उड़नदस्ता, ग्वालियर को प्रकरण निराकरण हेतु प्रेषित किया गया । उपायुक्त आबकारी, संभागीय उड़नदस्ता द्वारा दिनांक 2-2-2016 को आदेश पारित कर प्रेषित ग्रेन ई.एन.ए. में निर्धारित अधिकतम मार्ग हानि की सीमा 134.56 प्रूफ लीटर से कम कर शेष 47670.72 प्रूफ लीटर से अधिक मार्ग हानि पर विदेशी मदिरा नियम, 1996 के उप नियम 19(2) के अन्तर्गत रूपये 600/- प्रति प्रूफ लीटर की दर से रूपये 2,86,02,432/- की शास्ति अधिरोपित की गई । उपायुक्त आबकारी, संभागीय उड़नदस्ता के आदेश के विरूद्ध आबकारी आयुक्त, म.प्र., ग्वालियर के समक्ष प्रथम अपील प्रस्तुत किये जाने पर आबकारी आयुक्त द्वारा दिनांक 3-8-17 को आदेश पारित कर उपायुक्त, आबकारी संभागीय उड़नदस्ता का आदेश यथावत रखते हुए अपील निरस्त किया जाकर अपीलार्थी इकाई द्वारा अधिरोपित शास्ति की 25 प्रतिशत राशि रूपये 71,50,608/- जमा किये जाने की पुष्टि होने के उपरांत ही शास्ति की मूल राशि में उपरोक्त राशि का समायोजन किये जाने के आदेश दिये गये । आबकारी आयुक्त के इसी आदेश के विरूद्ध यह अपील इस न्यायलाय में प्रस्तुत की गई है ।

3/ अपीलार्थी के विद्वान अभिभाषक द्वारा लिखित तर्क में मुख्य रूप से निम्नलिखित आधार उठाये गये हैं :-

A. The impugned Order passed by Deputy Excise Commissioner is not in accordance with the provisions of law and is liable to be set aside.

B. It is submitted before this Hon'ble Court that, for ready reference to this Hon'ble Court Rule 16 and 19 of Rules of 1996 are reproduced as under :-

**"16. Permissible Limits of Losses.** (1) An allowance shall be made for the actual loss of spirit by leakage, evaporation etc., and of bottled foreign liquor by breakage caused by loading, unloading, handling etc. in transit, at the rate mentioned hereinafter. The total quantity of bottled foreign liquor transported or exported shall be the basis for computation of permissible losses.

(2) Wastage allowances on the spirit transported to the premises of F.L. 9 or F.L. 9A licenses shall be the same as given in sub-rule (4) of rule 6 of the Distillery Rules, 1995.

(3) Maximum wastage allowance for all transports of bottled foreign liquor shall be 0.1% if the selling licenses and the purchasing licenses belongs to the same district. It shall be 0.25% if they belong to different districts.

(5) if wastages/losses during the export or transport of bottled foreign liquor exceed the permissible limited prescribed in sub-rule (3) or (4), the prescribed duty on such excess wastage of bottled foreign liquor shall be recovered from the license,"

**"19. Penalties.** (1) without prejudice to the provisions of the Act, or condition No. 4 of licence in Form F.L.1, condition No. 7 of licence in Form F.L.2, condition No.4 of licence in Form F.L.3, the Excise Commissioner or the collector may impose a penalty not exceeding Rs. 50,000/- for contravention of any of these rules of the provisions of the Act or any other rules made under the Act or the order issued by the Excise Commissioner.

(2) On all deficiencies in excess of the limits allowed under Rule 16 and Rule 17, the F.L.9 or F.L.9A, F.L. 10-A or F.L. 10-B licence shall be liable to pay penalty at a rate exceeding three times but not exceeding four times the maximum duty payable on foreign liquor at that time, as may be imposed by the Excise Commissioner or any officer authorized by him:

Provided that if it be proved to the satisfaction of the Excise commissioner or the authorized officer that such excess deficiency or loss was due to some unavoidable cause like fire or accident and its first information report was lodged in Police Station, he may waive the penalty impossible under this sub-rule.

By perusing the above mentioned provisions it becomes clear that this Rule provides power to the State Govt. to levy penalty in case if it is found that the liquor is found short at the destination point as

compared to the quantity which was sent. One relaxation has been granted that loss of 0.25% would not be counted and if there is loss more than 0.25%, then the penalty as levied as per provision of Rule 19 of Rules of 1996. It is pertinent to note that, there is proviso appended to Rule 19 of Rules of 1996 that if it is proved to the satisfaction of Excise commissioner that the deficiency of loss is due to some unavoidable cause, then the penalty can be waived if the unavoidable circumstance is reported to the police station.

C. It is submitted before this Hon'ble Court that, in the case at hand the only ground on which the penalty has been levied is that no copy of FIR has been submitted by the Appellant therefore the benefit of exemption cannot be granted to the Appellant. It is submitted before this Hon'ble Court that, the reasoning assigned by the authorities is perverse as this Hon'ble Court in W.P. No. 274/2014 has held that registration of FIR is not mandatory for getting the exemption under Rule 19. If it is shown to the Excise commissioner/authorized officer that there was some unavoidable reason the report of which has been made to police station then it is incumbent upon the authorized officer to inquire about the genuineness of the explanation offered. In the case at hand the Appellant has submitted the report made to the police station and further there is ample documentary evidence available on record so as to show that the truck met with an accident and further the remaining spirit was destroyed by the order of Excise commissioner Assam. Even the officers of the Respondents, after due inquiry has found the accident was genuine. Therefore, no penalty can be levied on Appellant for excess transit loss. Copy of the order passed in W.P. No. 274/2014 has been filed as **Annexure P-16.**

D. It is submitted before this Hon'ble Court that. After due inquiry by the various authorities of Assam and M.P., it was clearly found that there

was loss of spirit due to the accident. The Respondents have however intentionally ignored the ample evidence and have without looking to the facts and circumstance, issued notice to the Appellant company. Though the Appellant company filed its reply, but without considering it and without looking to the fact that the intimation to the police was given the order levying the penalty of Rs. 2,86,02,432/- has been passed against the appellant vide Annexure P-1, holding that FIR was not lodged therefore no benefit can be given to the Appellant.

E. The impugned Order and the actions of the Respondents are in blatant contravention of the principles of natural justice. Not only have the Respondents completely ignored the submissions of the Appellant, but the Impugned order has been passes without according a personal hearing to the Appellant. This extremely malicious manner of functioning is motivated by oblique motives. The Appellant humbly submits that the Respondents ought to be reprimanded to ensure that no such orders are passed where there is no application of mind, there is a blatant disregard to justice, a clear violation of the principles of natural justice and where the provisions of law and the constitution are intentionally ignored.

F. It is submitted that the Appellant is not liable to pay any transit loss or penalty because the loss which has been occurred is due to unavoidable circumstances and the Appellant cannot be made liable for the same.

G. It is submitted that the penalty/excise duty, which is levied by the Government in the name of transit loss is an illegal mode of recovering money because if there is loss of liquor in transit, then it has not resulted in any damage or loss to the state exchequer. Therefore, it is not justified to levy any penalty on Appellant in the name of transit loss. It is pertinent to note that, whenever any export

permit is granted to the Appellant Company, the Appellant company is required to deposit the requisite duties with the state Excise Department. The quantity of spirit received at the destination point has nothing to do with the Appellant company because Appellant company has already paid the requisite duties which the Appellant company is required to pay, whatever the dues are left that is required to be paid by the party who has sought for the import permit. Therefore, it cannot be said that in order to evade the excise duty, there can be mischief by the Appellant company. Therefore, the impugned order even otherwise deserves to be set aside.

H. It is submitted that, the loss which is alleged to have been taken place is not in the control of Appellant company, as the loss has occurred due to normal wear and tear. The major cause of the loss is the condition of the roads due to which the chances of breakage increases. In view of this, charging any fee or penalty in the name of transit loss is wholly unjustified.

I. It is submitted that, any penalty is paid if there is any actual loss or damage to any person who has suffered loss on account of that damage. In the present case there is no actual/real loss or damage has been caused which the State can show or which has occurred to the state because of the loss in transit. Therefore, there is no prudent reason for recovering the amount from the appellant in the name of transit loss.

J. It is submitted before this Hon'ble Court that, even otherwise the Excise commissioner has directed to destroy the spirit which was kept in the compound of M/s Karnak Distillery private Limited panikhedi Guwahati. As such the Bihar police has sent the above said tanker to the aforesaid distillery, as they were having no means to keep the

spirit mixed with mud and dirty water. Therefore, the spirit was destroyed in the distillery complex in front of Inspector of excise.

K. It is submitted that, while granting license to the Appellant no such condition has been put in the license which empowers the State/Excise Department to recover any penalty or fee in the name of transit loss. Therefore, if no such condition has been put by the state Government in the license then the state is stopped from levying the same. Even otherwise there is no provision in the Act of 1915 which authorizes the state Govt. to levy any penalty in the name of transit loss. Therefore, when a penalty is not created by the main statute, then by virtue of Rule of 1996, the state Govt. is not justified in levying any penalty in the name of transit loss.

L. It is submitted that, the Appellant has already been paid paying whatever duty as per law levied on them on the amount of liquor which they are exporting therefore there is no actual loss has caused to the state for which the penalty has been imposed upon the Appellant company. In view of this no penalty in the name of transit loss should be recovered from the Appellant company.

M. It is submitted that, there is no provision in the M.P. Excise Act, 1915 which empowers the State Govt. to charge any fee/penalty in the name of transit loss. It is pertinent to note that when the main Act did not provides for charging of any fee/penalty in the name of transit loss then the same, cannot be charged under the rules made under the Act. Therefore, in view of this the demand raised by excise department is wholly unsustainable and is liable to be set aside.

N. It is submitted that, the Impugned order has been passed on 02.02.2016 on the basis of show cause notices issued dated 03.05.2010 and 25.02.2012, in which the Appellant has been directed to explain the loss which has occurred in the year 2008. Therefore, the recovery issued by

the excise department is highly belated and is liable to be quashed on the ground of delay and latches.

O. It is submitted before this Hon'ble court that, as per the proviso appended by Rule 19 of Rules of 1996, if it is proved to the satisfaction excise commissioner or its authorized officer that the loss was due to fire or any other unavoidable circumstances then the penalty can be waived. In this case the consignment was going to Assam and it met with an accident. The report was made to police station Ujiyarpur District Samastipur, Bihar conducted an inquiry and found that the accident is due to heavy rain. The spirit which was destroyed was not fit for human consumption. It is further submitted that, whenever any accident taken place the aggrieved person can only informed the police and that information can be termed as first information report so far as the purpose of proviso appended to Rule 19 of the Rules of 1996 are concerned. Thus, the report lodged by the appellant company can be said to be first information report for the purpose of Rule 19 of the Rules of 1996. The respondents cannot make a narrow interpretation of the word First information Report for the purpose of Rule 19 of Rules 1996. Therefore, the penalty levied on the appellant's company is liable to be set aside.

P. It is submitted before this Hon'ble court that, learned Excise commissioner without conducting any enquiry, as held that the entire incident is suspicious. The appellants are lying on the certificate/Panchanam/letter issued by the statutory authorities and therefore the same could not have been likely brushed aside without conducting enquiry. No material is available on record that the Excise commissioner has verified the documents filed by the appellant with the concern police station or the Excise Department of the concerned state.

In the absence of making the injury, the impugned order learned Excise commissioner is bad in law and deserves to be set aside.

Q. It it submitted before this Hon'ble court that, the truck went off the road and therefore actually no offence was committed and consequently the no FIR could have been lodged, however in order to show bonafide, the matter was reported to the police and under the supervision of police pertaining to police station ujiyarpur and the excise inspector of Gwalior, the spirit was sent. Therefore, there is no basis to raise doubt on the genuineness of the documents submitted by the appellant.

R. It is submitted before this Hon'ble court that, this Hon'ble court in W.P. No. 274/2014 has laid down the law that whenever the documents the shape of FIR/certificates issued by the police will be submitted, the Excise commissioner is duty bound to conduct and enquiry and then to decide the case. Admittedly no enquiry has been done and therefore the order passed by learned Excise commissioner is contrary to the decision of Hon'ble High court and therefore the impugned order deserves to be set aside.

S. It is submitted before this Hon'ble court that, during the course of hearing of appeal before this court the respondent could not point out any material which may create doubt on the explanation offered by the Appellant company. No material has been brought on record which may discard the documents submitted by the Appellant.

उक्त तर्कों के समर्थन में 2015 आर.एन. 255 का न्याय दृष्टांत प्रस्तुत किया गया है।

4/ प्रत्यर्थीगण के विद्वान अभिभाषक द्वारा मुख्य रूप से तर्क प्रस्तुत किया गया कि अपीलार्थी इकाई द्वारा मदिरा पारेषण में टेंकर दुर्घनाग्रस्त होने के संबंध में न तो प्रथम सूचना प्रतिवेदन दर्ज कराई गई है और न ही बीमा क्लेम संबंधी कोई साक्ष्य प्रस्तुत किया गया है, जो कि संदेहास्पद होकर विश्वसनीय नहीं है । यह भी कहा गया कि उपायुक्त, आबकारी संभागीय उड़नदस्ता द्वारा अपीलार्थी इकाई को बताओ सूचना पत्र जारी किया गया था, किन्तु अपीलार्थी इकाई द्वारा प्रस्तुत उत्तर समाधानकारक नहीं होने से उपायुक्त

आबकारी संभागीय उड़नदस्ता द्वारा अपीलार्थी इकाई पर जो शास्ति अधिरोपत की गई है, वह उचित है और आबकारी आयुक्त द्वारा उपायुक्त आबकारी संभागीय उड़नदस्ता के आदेश को स्थिर रखने में कोई भूल नहीं की गई है ।

5/ उभय पक्ष के विद्वान अभिभाषकों द्वारा प्रस्तुत तर्कों के संदर्भ में अभिलेख का अवलोकन किया गया । अधीनस्थ न्यायालय के अभिलेख के अवलोकन से स्पष्ट है कि अपीलार्थी इकाई द्वारा परमिट क्रमांक आर.एस. 3/317/20 एवं 318/21 दिनांक 25-9-2008 कुल 40 हजार बल्क लीटर, जिसका पी.एल. 68280 ग्रेन ई.एन.ए. का निर्यात मेसर्स करनॉक डिस्टलरी प्रा.लि. पानीखेड़ा गुवाहाटी किया गया था । महालेखाकार, ग्वालियर के अंकेक्षण दल द्वारा निर्यात किये गये ई.एन.ए की 47805.28 प्रूफ लीटर कमी सत्यापन होने पर उपायुक्त आबकारी, संभागीय उड़नदस्ता द्वारा अपीलार्थी इकाई को कारण बताओ सूचना पत्र जारी किया गया । अपीलार्थी इकाई का उत्तर समाधानकारक नहीं होने से उपायुक्त आबकारी संभागीय उड़नदस्ता द्वारा दिनांक 2-2-2016 को आदेश पारित कर प्रेषित ग्रेन ई.एन.ए. में निर्धारित अधिकतम मार्ग हानि की सीमा 134.56 प्रूफ लीटर से कम कर शेष 47670.72 प्रूफ लीटर से अधिक मार्ग हानि पर विदेशी मदिरा नियम, 1996 के उप नियम 19(2) के अन्तर्गत रूपये 600/- प्रति प्रूफ लीटर की दर से रूपये 2,86,02,432/- की जो शास्ति अधिरोपित की गई है, वह उचित है, जिसकी पुष्टि आबकारी आयुक्त द्वारा भी की गई है । विचारणीय बिन्दु यह है कि यदि मदिरा पारेषण के दौरान वाहन दुर्घटनाग्रस्त हो गया था तो अपीलार्थी इकाई को इस संबंध में प्रथम सूचना प्रतिवेदन दर्ज करया जाना चाहिए था, किन्तु इस प्रकार की कोई कार्यवाही किया जाना अभिलेख से परिलक्षित नहीं होता है । अपीलार्थी इकाई द्वारा यह दर्शाने का प्रयास किया गया है कि राज्य शासन को राजस्व की कोई हानि नहीं हुई है । इस संबंध में उल्लेखनीय है कि जहां अधिनियम अथवा नियमों में स्पष्ट आज्ञापक प्रावधान हैं और उन प्रावधानों का उल्लंघन अपीलार्थी इकाई द्वारा किया जाता है, तब उस पर शास्ति अधिरोपित की जाना अवैधानिक दृष्टि से उचित कार्यवाही है । उपरोक्त विशलेषण के परिप्रेक्ष्य में अपीलार्थी कम्पनी द्वारा लिखित तर्क में उठाये गये आधार मान्य किये जाने योग्य नहीं हैं ।

6/ उपरोक्त विवेचना के आधार पर आबकारी आयुक्त, म.प्र. ग्वालियर द्वारा पारित आदेश दिनांक 3-8-17 स्थिर रखा जाता है । अपील निरस्त की जाती है ।

(मनोज गोयल)
अध्यक्ष
राजस्व मण्डल, मध्यप्रदेश
ग्वालियर