न्यायालय राजस्व मण्डल, मध्यप्रदेश, ग्वालियर

समक्षः **मनोज गोयल**

अध्यक्ष

प्रकरण क्रमांक पीबीआर/अपील/ग्वालियर/आ.अ./2017/4043 विरूद्ध आदेश दिनांक 13-9-17 पारित द्वारा आबकारी आयुक्त, मध्यप्रदेश, ग्वालियर अपील प्रकरण क्रमांक आर.ई.सी./3620/16-17.

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
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:: आ दे श ::

(आज दिनांक 12/9/18 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 **13-9-20**17 के विरूद्ध प्रस्तुत की गई है ।

2/ प्रकरण के तथ्य संक्षेप में इस प्रकार हैं कि मेसर्स ग्वालियर एल्कोब्रू प्रा.लि रायरू जिला ग्वालियर से निर्यात परमिट क्रमांक 502/503 दिनांक 19-9-2005 से 900 पेटी रॉयल स्टेग व्हिस्की वाहन क्रमांक एम.पी. 09-के-9921 द्वारा पटना (बिहार) को प्रेषित की गई थी । आबकारी उप निरीक्षक, मुरैना द्वारा दिनांक 20-9-2005 को ग्राम निबी हराई रोड मुरैना पर जांच के दौरान निर्धारित रूट से अलग रूट पर परिवहन करने के कारण 572 पेटी रॉयल स्टेग व्हिस्की जप्त कर अधिनियम की धारा 34(1)(क) एवं 34(2) के अंतर्गत प्रकरण पंजीबद्ध किया गया । जप्त मदिरा 50 लीटर से अधिक होने के कारण जिला आबकारी

अधिकारी मुरैना द्वारा जप्तशुदा मदिरा के राजसात की कार्यवाही हेतु प्रतिवेदन कलेक्टर, मुरैना को प्रेषित किया गया । कलेक्टर द्वारा प्रकरण क्रमांक 47/08-09/बी-121/(आब.) में दिनांक 15-6-2009 को आदेश पारित कर जप्त विदेशी मदिरा की 572 पेटी अपीलार्थी इकाई को वापिस सुपुर्द किये जाने के आदेश दिये गये । ऑडिट दल द्वारा परमिट क्रमांक 502/503 का सत्यापन प्रतिवेदन प्राप्त नहीं होने पर शेष 328 पेटी (2214 प्रुफ लीटर) पर तत्समय देय ड्यूटी 275 लीटर से संगणित कर रूपये 608850/- देय ड्यूटी अपीलार्थी इकाई पर अधिरोपित की गई । उक्त राशि की वसूली हेतु सहायक आबकारी आयुक्त, ग्वालियर द्वारा अपीलार्थी इकाई को मांग पत्र जारी किया गया, जिसके विरूद्ध अपीलार्थी इकाई द्वारा आबकारी आयुक्त, म.प्र. ग्वालियर के समक्ष अपील प्रस्तुत की गई । आबकारी आयुक्त द्वारा अपील प्रकरण क्रमांक आर.ई.सी./3620/16-17 दर्ज कर दिनांक 13-9-2017 को आदेश पारित कर अपील निरस्त की गई एवं अपीलार्थी इकाई द्वारा अधिरोपित शास्ति की 25 प्रतिशत राशि रूपये 152273/- 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 exports of bottled foreign liquor shall be 0.25% irrespective of distance.

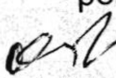
(4) Maximum wastage allowance for all transports of bottled foreign liquor shall be 0.1% if the selling licenses and the purchasing licenses belongs to the same district. It shall be 0.25% if they belong to different districts.

(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,"

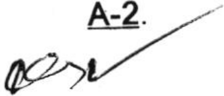
"19. Penalties. (1) without prejudice to the provisions of the Act, or condition No. 4 of licence in Form F.L.1, condition No. 7 of licence in Form F.L.2, condition No.4 of licence in Form F.L.3, the Excise Commissioner or the collector may impose a penalty not exceeding Rs. 50,000/- for contravention 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. In the case at hand admittedly there was a robbery which took place and the matter was reported to police and further in the confiscation proceedings before the court of collector it was found that some unknown person has robbed the vehicle carrying the liquor and the remaining liquor was released in the appellant company. Therefore, it is clear that the shortage of the liquor or the transit loss is not attributable to the present appellant and therefore the learned Excise commissioner was under legal obligation to conduct the inquiry to verify regarding the explanation offered by the appellant. The Excise commissioner is duty bound to conduct an enquiry in view of the law laid down by the Hon'ble High court of M.P. in judgment reported in 2015 MPRN 255 (Pernod Ricard India Private Limited Vs. State of M.P.). Therefore, the impugned order passed by learned Excise commissioner is bad in law and deserves to be set aside. Copy of the order passed by collector District Morena has been filed as **Annexure-A-2**.



C. It is submitted before this Hon'ble court that, the appellant is not liable to the pay any transit loss as the vehicle in question was robbed by unknown person.

D. It is submitted before this Hon'ble court that, the learned Excise commissioner has not at all considered the material aspect that the order imposing penalty was never served on the appellant. Therefore, there is a gross violation of principle of natural justice and accordingly the impugned orders suffers from violation of principle of natural justice and accordingly they deserves to be quashed.

E. It is submitted before this Hon'ble court that, the action of the respondent whereby they are not providing the copy of the impugned order is highly arbitrary.

F. It is submitted before this Hon'ble court that, the impugned order and the actions of the Respondents are in blatant contravention of the principles of natural justice. Not only the learned Deputy Excise commissioner has passed the order in ex-parte manner and further no opportunity of hearing has been provided 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.

G. 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.

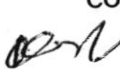
H. It is submitted that the penalty/excise duty, which is levied by the Government in the name of transit loss is an illegal mode of

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.

I. 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 robbery. Therefore it is clear that the shortage of the liquor or the transit loss is not attributable to the present appellant. In view of this, charging any fee or penalty in the name of transit loss is wholly unjustified.

J. 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.

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



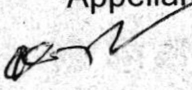
Department to recover any penalty or fee in the name of transit loss. Therefore, if no such condition has been put by the state Government in the license then the state is estopped from levying the same. Even otherwise there is no provision in the Act of 1915 which authorizes the state Govt. to levy 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. That the demand suffers from Latches as the demand was made after almost 10 years after issuance of the permits in question. There is no law requiring the appellant to preserve the documents for such a long period and hence the Appellant is at a dis-advantageous position.

O. That the Appellant had paid CVD to the importing state before getting the import permit, and also paid Export fee and other levies applicable for the export the consignment, hence the demand made against the Appellant is illegal and contrary to the law.



P. 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.

4/ प्रत्यर्थीगण के विद्वान अभिभाषक द्वारा मुख्य रूप से तर्क प्रस्तुत किया गया कि जिस वाहन से मदिरा निर्यात किया गया था, उक्त वाहन निर्धारित रूट से अलग रूट पर परिवहन किये जाना पाये जाने पर आबकारी उप निरीक्षक द्वारा अपीलार्थी इकाई के विरूद्ध अधिनियम के प्रावधानों के अंतर्गत अपराधिक प्रकरण पंजीबद्ध किया गया है । यह भी कहा गया कि ऑडिट दल द्वारा परमिट का सत्यापन प्रतिवेदन प्राप्त नहीं होने पर अपीलार्थी इकाई से ड्यूटी राशि अधिरोपित की गई है, जिसके आधार पर सहायक आबकारी आयुक्त द्वारा उक्त राशि की वसूली हेतु मांग पत्र जारी किया गया है, जिसमें कोई त्रुटि नहीं है । अंत में तर्क प्रस्तुत किया गया कि अधीनस्थ न्यायालय का आदेश उचित है, जिसमें हस्तक्षेप की कोई आवश्यकता नहीं 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 जिस वाहन क्रमांक एम.पी. 09-के-9921 द्वारा मेसर्स ग्वालियर एल्कोब्रू प्रा.लि. ए.बी. रोड रायरू जिला ग्वालियर से पटना (बिहार) को मदिरा निर्यात किया गया था, उक्त वाहन आबकारी उप निरीक्षक द्वारा ग्राम निबी हराई रोड मुरैना पर जांच के दौरान निर्धारित रूट से परिवहन नहीं कर, अलग रूट से परिवहन किया जाना पाया गया है । उपरोक्त स्थिति में आबकारी उप निरीक्षक द्वारा मदिरा की 572 पेटी जप्त कर, अपीलार्थी इकाई के विरूद्ध अधिनियम के प्रावधानों के अंतर्गत आपराधिक प्रकरण पंजीबद्ध किया गया था, जिसके आधार पर जिला आबकारी अधिकारी द्वारा जप्त शुदा मदिरा राजसात करने की कार्यवाही हेतु कलेक्टर को प्रतिवेदन प्रस्तुत किया था । मेसर्स ग्वालियर एल्कोब्रू प्रा.लि. ए.बी. रोड रायरू जिला ग्वालियर से पटना (बिहार) को निर्यात परमिट क्रमांक 502/503 का सत्यापन प्रतिवेदन प्राप्त नहीं होने पर ऑडिट दल द्वारा शेष 328 पेटी पर तत्समय देय शुल्क अपीलार्थी इकाई पर अधिरोपित किया गया है, जिसके आधार पर सहायक आबकारी आयुक्त द्वारा अपीलार्थी से उक्त राशि की वसूली हेतु मांग पत्र जारी किया गया है, जिसे आबकारी आयुक्त द्वारा भी उचित होने से हस्तक्षेप योग्य नहीं माना 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 13-9-2017 स्थिर रखा जाता है । अपील निरस्त की जाती है ।

(मनोज गोयल)
अध्यक्ष
राजस्व मण्डल, मध्यप्रदेश
ग्वालियर