न्यायालय राजस्व मण्डल, मध्यप्रदेश, ग्वालियर

26

समक्ष : **मनोज गोयल**

अध्यक्ष

प्रकरण क्रमांक अपील 6523/2018/ग्वालियर/आ.अ. विरूद्ध आदेश दिनांक 12-11-2018 पारित द्वारा आबकारी आयुक्त, मध्यप्रदेश, मोतीमहल, ग्वालियर पृष्ठांकन क्रमांक 5(1)2018-19/7180.

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निवासी रायरू फार्म, ग्वालियर ....अपीलार्थी

विरूद्ध

एक्साईज कमिश्नर, मोतीमहल, ग्वालियर ....प्रत्यर्थी

श्री राहुल बंसल, अभिभाषक, अपीलार्थी
श्री मुकेश शर्मा, अभिभाषक, प्रत्यर्थी

:: आ दे श ::

(आज दिनांक 2/5/19 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 पृष्ठांकन क्रमांक 5(1)2018-19/7180 में पारित आदेश दिनांक 12-11-2018 के विरूद्ध प्रस्तुत की गई है ।

2/ प्रकरण के तथ्य संक्षेप में इस प्रकार हैं कि अधीनस्थ न्यायालय ने पत्र क्रमांक 5(1)2017-18/783 दिनांक 7-3-2017 द्वारा वर्ष 2017-18 के लिए अपीलार्थी कम्पनी को उसे प्रदाय क्षेत्र जिला मुरैना के मद्यभाण्डागारों में एक दिन के औसत प्रदाय का 25 प्रतिशत संग्रह कांच की बोतलों में रखने के निर्देश दिये गये थे । सहायक आबकारी आयुक्त, जिला मुरैना के पत्र पृष्ठांकन क्रमांक/आब./ठेका/2018/1958 दिनांक 12-7-2018 के अनुसार अपीलार्थी कम्पनी द्वारा देशी मदिरा स्टोरेज भाण्डागार मुरैना पर अवधि माह अप्रैल, 2017 से जुलाई, 2017 एवं माह नवम्बर, 2017 तथा देशी मदिरा स्टोरेज भाण्डागार अम्बाह पर अवधि माह अप्रैल, 2017 से नवम्बर, 2017 तक की अवधि में, एक दिवस के औसत प्रदाय का 25 प्रतिशत संग्रह कांच की

बोतलों में नहीं रखा गया है । अपीलार्थी कम्पनी द्वारा की गई उक्त अनियमितता के संबंध में अधीनस्थ न्यायालय द्वारा अपीलार्थी कम्पनी को कारण बताओ सूचना पत्र जारी किया गया । अपीलार्थी का उत्तर समाधानकारक नहीं होने से अधीनस्थ न्यायालय ने पृष्ठांकन क्रमांक 5(1)2018-19/7180 में दिनांक 12-11-2018 को आदेश पारित कर अपीलार्थी कम्पनी द्वारा म.प्र. देशी स्प्रिट नियम, 1995 (जिसे संक्षेप में म.प्र. देशी स्प्रिट नियम कहा जायेगा) के नियम 4(4) का उल्लंघन किये जाने से नियम 12(1) के अंतर्गत दण्डनीय होने के कारण अपीलार्थी कम्पनी पर रूपये 15,000/- शास्ति अधिरोपित करने के साथ ही अपीलार्थी कम्पनी द्वारा देशी मदिरा स्टोरेज मद्यभाण्डागार मुरैना पर अवधि माह अप्रैल, 2017 से जुलाई 2017 एवं माह नवम्बर, 2017 तथा देशी मदिरा स्टोरेज भाण्डागार अम्बाह पर अवधि माह अप्रैल, 2017 से नवम्बर, 2017 तक कुल 376 दिन, एक दिवस के औसत प्रदाय का 25 प्रतिशत बोतलबंद देशी मदिरा संग्रह कांच की बोतलों में नहीं रखे जाने के कारण रूपये 250/- प्रतिदिन के मान से 94,000/- रूपये शास्ति अधिरोपित करते हुए कुल 1,09,000/- रूपये जमा करने के आदेश दिये गये । आबकारी आयुक्त के इसी आदेश के विरूद्ध यह अपील इस न्यायालय में प्रस्तुत की गई है ।

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

1. It is submitted before this Hon'ble court that, the order passed by the Excise Commissioner is in violation of Principle of Natural justice and therefore the same deserves to be set aside. No personal hearing was given to the appellant before passing the impugned order.

2. It is submitted before this Hon'ble Court that, the tender condition is being wrongly interpreted by the authority below. The Excise commissioner failed to appreciate that the tender condition for keeping minimum stock of glass bottle did not get triggered in the facts of the present case as the supply in glass bottle was nil/nearly nil during the relevant period, and accordingly, the stock of 25% one day's average issue in glass bottles would be nil/nearly nil. On a completely erroneous and contrary interpretation, it is being stated that the 25% is to be computed on the basis of total issues in glass bottles. Such an interpretation is not only erroneous but will make the condition completely arbitrary and unworkable. It is obvious that the said condition has been

imposed to ensure that adequate stock is available so that the supplies are not disrupted or delayed, thereby affecting excise revenue. When the demand of liquor in glass bottles is nil/nearly nil, on the basis of past sales in glass bottles, the condition cannot be interpreted in a manner to suggest that 25% stock in glass bottles is still required to be maintained as the 25% is to be calculated on the basis of total issues (i.e. issues in glass bottles and pet bottles both). The entire basis of the interpretation of tender condition in the impugned orders is irrational and without any basis, whereby, the Respondents have imposed onerous obligations on the Petitioner of maintaining 25% of the stock of country liquor in glass bottles, which interpretation and consequential actions are beyond the purview of the Act the rules and therefore, liable to be quashed.

3. It is submitted before this Hon'ble Court that, any condition imposed by the statutory authorities is mandated to have a reasonable nexus with the objects being sought to be achieved by the Act. In the present facts and circumstances, there is nil/nearly nil demand of glass bottles in the market and the entire demand is of PET bottles. In the absence of any demand with respect to glass bottles, the tender condition, as interpreted by the Respondents, clearly does not have any nexus with objects of the Act and therefore, the same is arbitrary and is liable to be quashed.

4. It is submitted before this Hon'ble Court that, the glass bottles which is mandated in terms of tender condition, as interpreted by the Respondents, impose an onerous obligation on the Petitioner. It is submitted that the law requires the Respondents to be reasonable and impose conditions or restrictions which are in line with accepted market practices. Thus, where the interpretation of tender condition is inconsistent with the market conditions and demand, the same is liable to be clarified by giving it in interpretation which is in consonance with the object for which the same has been inserted, and which would not be onerous and causing undue hardship.

5. It is submitted that the interpretation of the Respondents of tender condition is contrary to the very purpose for which the said condition was imposed. The said condition has been imposed to ensure that adequate stock is available so that the supplies are not disrupted or delayed, thereby affecting excise revenue. When the demand of liquor in glass bottles is nil/nearly nil, on the basis of past sales in glass bottles, the condition cannot be interpreted in a manner to suggest that 25% stock in glass bottle is still required to be maintained as the 25% is to be calculated on the basis of total issue (i.e. issue in glass bottles and pet bottles both). Therefore, tender condition, as interpreted by the Respondents, is arbitrary and contrary to the purpose for which it was enumerated.

6. It is submitted before this Hon'ble Court that, glass bottles are no longer in demand and the only existent demand from the retailers is of PET bottles. Further, this aspect of decline in demand of glass bottles has also been recognized by the Respondent themselves wherein, in the recent tender conditions dated 03.02.2018 for 2018-19, the Respondent themselves have removed the requirement of maintenance of stock in glass bottles. Therefore, it is clear that tender condition, as interpreted by the Respondents, is completely onerous, arbitrary, unreasonable and has been imposed without considering the market needs.

7. It is submitted that if the interpretation which is adopted by the Respondents is upheld by this Hon'ble Court, the same would be completely against the scheme of the Act and the Rules, would not be in consonance with the market conditions, and apart from being onerous and arbitrary, would also cause undue hardship on the Petitioner, which interpretation is completely unwarranted in the facts and circumstances of the present case. It is accordingly prayed that this Hon'ble Court may be pleased to reject such an interpretation of tender condition, which is inconsistent with the scheme of the Act and the Rules.

8. It is submitted before this Hon'ble Court that, none of the statutory conditions provided in the Act or the Rules require the licensee to mandatorily

maintain 25% stock in glass bottle. The only requirement on the licensee is to ensure that the demand of liquor is fulfilled. In the present case, there is no dispute that the Petitioner has in fact fulfilled the requirements of the retailers and there has been no instance where the demand has not been fulfilled.

9. It is submitted before this Hon'ble Court that, impugned condition for maintenance of glass bottle is part of the tender conditions. The said conditions having been issued in exercise of the powers under the Act and Rules, are required to impose only such conditions which are consistent with the provisions of the Act and Rules. However, on account of the interpretation of the Respondents of tender condition, onerous obligation have been imposed which are beyond the provisions of the Act and the Rules and therefore, the same is liable to be accordingly clarified in line with the provisions of the Act and the Rules.

10. It is submitted that the condition in the present case pertains to maintenance of stock of 25% of one day's average issue in glass bottles. It is and undisputed position of fact that there is nil/nearly nil demand of Country Spirit in glass bottles and the entire demand during the relevant period pertains to PET bottles. Accordingly, the one day average issue of glass bottles in the facts of the present case would be nil/nearly nil. Therefore, there is no violation of tender condition by the Petitioner, as the said condition did not trigger in the facts of the present case. Accordingly, the impugned Orders passed by the Excise commissioner fails to take into consideration this crucial factor, and the impugned order is therefore erroneous and arbitrary, and deserves to be set aside on this ground alone.

11. It is submitted that the impugned Orders passed by the Excise commissioner as also the impugned order has mechanically applied tender condition prescribed under the tender, without appreciating the undisputed factual position, which can be corroborated by way of documentary evidence, that there is no demand of supply in glass bottles, and the entire demand during the relevant period pertains to supply in PET bottles. In such

circumstances, mechanical imposition of tender condition is itself completely arbitrary and unreasonable, and the impugned orders deserves to be quashed on this ground alone.

12. It is submitted before this Hon'ble Court that, in the present case, there has not been any instance where the demand was raised by any retailer to get the Country liquor in glass bottle and the same has not been fulfilled due to non-availability of stock in glass bottle. Since there is no loss caused to the State Government therefore, the impugned orders levying penalty on the Petitioner are bad in law and accordingly deserve to be set aside.

13. It is submitted before this Hon'ble Court that, it is not the case of the respondent that at any point in time, the present petitioner was not able to provide the Country liquor against any demand. Therefore, assuming without admitting that at some point in time the quantity has fallen of the required quantity, the same has not caused any loss or prejudice to the respondent. Therefore, no penalty is required to pay by the petitioner.

14. It is submitted before this Hon'ble Court that, in similar circumstances, the Board of Revenue in Appeal no. 1010/PBR/2011 vide its order dated 25.01.2013 has held that since no loss has been caused to the State therefore no penalty van be levied. The order passed by Board of Revenue has been affirmed by the Principal Seat of this Hon'ble Court vide order dated 01.07.2013 passed in W.P. no. 10997/2013.

15. It is submitted before this Hon'ble Court that, penalty cannot be levied just because a rule has been violate unless the violation was wilful and in order to defeat the provision. Therefore, in this case since the violation of the rule was not wilful and was not in order to defeat the provision or was not in order to cause any loss to the State Govt. and the alleged default is wholly on account of the arbitrary interpretation, therefore the penalty cannot be levied by the respondent.

16. It is submitted that Respondent No. 2 issued show cause notice purportedly under Rule 4(4) of the Rules and to impose penalty under Rule 12(1) of the

Rules for the alleged violation of condition 6 (xxxi). For ease of reference the relevant Rules are reproduced as under:

Rule 4(4) of the M.P. Country Spirit Rules, 1995

"(4) (a) The license shall maintain at each "bottling unit" a minimum stock of bottled liquor and rectified spirit equivalent to average issues of five and seven days respectively of the preceding month. In addition, he shall maintain at each "storage warehouse" a minimum stock of bottled liquor equivalent to average issue of five days of the preceding month:

Provided that in special circumstances, the Excise commissioner may reduce the above requirement of maintenance of minimum stock of rectified spirit and/or sealed bottles in respect of any "bottling unit" or "storage warehouse."

(b) The C.S. I license shall maintain at each [bottling unit] such minimum stock of empty-bottles as may be fixed by the District Excise officer of the concerned district."

Rule 12(1) of the M.P. Country Spirit Rules, 1995

"(1) Without prejudice to the provisions of the conditions of the C.S.1 license and save where provisions is expressly made for any other penalty in these rules, the Excise commissioner may impose upon C.S.1 license a penalty not exceeding Rs. 2,00,000/- for any breach or contravention of any of these rules or the provisions of Madhya Pradesh Excise Act, 1915 or rules made thereunder or orders of the Excise commissioner and may further impose in the case of continued contravention an additional penalty not exceeding Rs. 1,000.00 for every day during which the breach or contravention is continued."

17. From the above it is clear that Condition 6 (xxxi) has no correlation with Rule 4(4) or Rule 12(1) of the Rules. The very issuance of the show cause notice is therefore bad in law and the consequently impugned orders are also unsustainable.

18. Without prejudice to the invalidity of tender condition, it is submitted that the tender condition is a condition stipulated under a tender document and is not a statutory condition. Therefore any violation of the terms of the tender document would, if anything, result in invocation of contract law and not a statue which has no such provision. The impugned order is therefore grossly misconceived and band in law and accordingly ought to be set aside.

19. It is submitted before this Hon'ble Court that, the respondents while levying the penalty in this case has invoke provision of Rule 12(1) of the M.P. Country spirit Rules, 1995. For invoking Rule 12(1), it is incumbent on the respondent to show that under the license, there is any condition to keep 25% of the stock of glass bottle. There has to be an order or any specific rule for keeping the stock in glass bottle. In the absence of the same no penalty can be levied. Since there is no rule in the entire country spirit Rules that 25% of the stock is required to be kept in glass bottle therefore no penalty under Rule 12 can be levied.

20. It is submitted before this Hon'ble Court that, the impugned orders by relying upon tender condition have imposed penalty on the Petitioner under Rule 12 of the Rules. However, a perusal of the said Rule 12 discloses that the same is a general provision for imposition of penalty. No reference has been made either in the impugned orders to any specific provision which has been invoked for imposition of penalty against the Petitioner. It is submitted that no penalty can be imposed on the Petitioner by relying upon general provisions and without making reference to any specific provision imposing penalty for non-maintenance of stock in glass bottles.

4/ प्रत्यर्थी शासन के विद्वान अभिभाषक द्वारा लिखित तर्क में मुख्य रूप से निम्नलिखित आधार उठाए गए हैं:-

1. देशी स्प्रिट के नियम 4(4) जो कि आज्ञापक उपबंध है, के अनुसार-

4. Manufacture, working & Control:---

(4) The license shall maintain at the distillery the minimum stock of spirit as prescribed by the Excise Commissioner from time to time."

2. ईकाई मेसर्स ग्वालियर, एल्कोब्रू, रायरू जिला ग्वालियर को पत्र क्रमांक 5(1)2017-18/783 दिनांक 7-3-2017 के द्वारा अप्रैल 2017 से मार्च 2018 तक की अवधि के लिए मध्यभाण्डागार मुरैना के लिए सी.एस. 1 लाइसेंस प्रयाय किया गया था।

3. सी.एस. 1 लाइसेंस की शर्त क्र. 3 के अनुसार ईकाई को 1 दिवस के औसत प्रदाय का 25 प्रतिशत संग्रह कांच की बोतल को रखा जाना आवश्यक था।

4. सहायक आबकारी आयुक्त, जिला मुरैना के पत्र क्रमांक/आब./ठेका/2018/1958 दिनांक 12-7-2018 के अनुसार अपीलार्थी कम्पनी द्वारा देशी मदिरा स्टोरेज भाण्डागार मुरैना पर अवधि माह अप्रैल, 2017 से जुलाई, 2017 एवं माह नवम्बर, 2017 तथा देशी मदिरा स्टोरेज भाण्डागार अम्बाह पर अवधि अप्रैल, 2017 से माह नवम्बर, 2017 तक की अवधि में कुल 376 दिवस बोतलबंद देशी मदिरा का न्यूनतम स्टॉक कांच की बोतलों में नहीं रखा गया है ।

5. उपरोक्तानुसार इकाई को आबकारी आयुक्त द्वारा पत्र क्रमांक 5(1)/2018-19/3884 दिनांक 25-7-2018 प्रेषित करते हुए इकाई से उपरोक्त के संबंध में कारण बताओ सूचना पत्र जारी किया जाकर 7 दिवस के भीतर उत्तर प्रस्तुत करने हेतु निर्देशित किया गया था, जिसकी तामीली अपीलार्थी के अधिकृत प्रतिनिधि को कराई गई है ।

6. अपीलार्थी के उपरोक्त कृत्य को आबकारी आयुक्त द्वारा म.प्र. देशी स्प्रिट नियम 1995 के नियम 4(4) का उल्लंघन है और उपरोक्त आधार पर नियम 12(1) के अधीन दण्डनीय होना मान्य किया गया और उपरोक्तानुसार मद्यभाण्डागार पर 376 दिवस का न्यूनतम स्टॉक भण्डार नहीं पाया गया और उपरोक्त के आधार पर 250/- रूपये प्रतिमाह के हिसाब 94,000/- रूपये एवं न्यूनतम स्टॉक नहीं रखे जाने से 15,000/- रूपये शास्ति अधिरोपित कर कुल 1,09,000/- की शास्ति अधिरोपित की गई ।

7. उपरोक्त अधिरोपित इकाई के म.प्र. देशी स्प्रिट नियम का उल्लंघन किये जानेसे 4(4) का उल्लंघन कियेजाने से नियम 12(1) अनुसार यह दण्डनीय होने से उपरोक्त के आधार पर अनियमितता एवं विहित प्रावधानों के उल्लंघन होने पर इकाई पर 1,09,000/- रूपये की शास्ति अधिरोपित की गई है ।

8. अपीलार्थी द्वारा अपील मेमों के साथ आबकारी आयुक्त के समक्ष कोई भी प्रमाण प्रस्तुतनहीं किया, जिससे यह दर्शित हो कि अपीलार्थी द्वारा विहित वैधानिक नियमानुसार 25 प्रतिशत का संग्रह कांच की बोतल में रखा गया और न ही ऐसा कोई प्रमाण प्रस्तुत नहीं किया है, जिससे यह दर्शित हो कि अपीलार्थी द्वारा उपरोक्त नियम का उल्लंघन नहीं किया गया है । अपीलार्थी द्वारा मेमों में वर्णित न्याय दृष्टांत माननीय उच्च न्यायालय द्वारा याचिका क्रमांक 60/2016 मेसर्स सोम डिस्टलरीज आदि में विचारण में लेते आदेश पारित किया गया है और उपरोक्त

माननीय उच्च न्यायालय द्वारा यह निर्धारित किया गया है कि नियम 12 स्प्रिट नियम 1995 का उल्लंघन होने के कारण शास्ति अधिरोपित की गई, जिसमें व्यक्तिगत हानि आवश्यक नहीं है और शास्ति अधिरोपित किए जाने से नियम का उल्लंघन किए जाने हेतु पर्याप्त है ।

उनके द्वारा अपील निरस्त कर अधीनस्थ न्यायालय का आदेश स्थिर रखने का अनुरोध किया गया।

5/ उभय पक्ष द्वारा प्रस्तुत तर्कों के संदर्भ में अभिलेख का अवलोकन किया गया । अभिलेख से स्पष्ट है कि अपीलार्थी कम्पनी द्वारा देशी मदिरा स्टोरेज भाण्डागारों मुरैना पर अवधि माह अप्रैल, 2017 से जुलाई, 2017 एवं नवम्बर, 2017 तथा अम्बाह पर अवधि माह अप्रैल, 2017 से नवम्बर, 2017 तक की अवधि में, कुल 376 दिन, एक दिवस के औसत प्रदाय का 25 प्रतिशत बोतलबंद देशी मदिरा संग्रह कांच की बोतलों में नहीं रखा गया है, जबकि म.प्र. देशी स्प्रिट नियमों के नियम 4(4) व सी.एस. 1 लायसेंस की शर्त क्रमांक 3 के अनुसार प्रदाय संविदाकार द्वारा स्टोरेज मद्य भाण्डागार में एक दिन के औसत प्रदाय का 25 प्रतिशत संग्रह कांच की बोतलों में रखना अनिवार्य है । भले ही अपीलार्थी द्वारा स्टोरेज मद्य भाण्डागार में एक दिन के औसत प्रदाय का 25 प्रतिशत संग्रह कांच की बोतलों में नहीं रखने से शासन को राजस्व की हानि नहीं हुई हो, परन्तु अपीलार्थी कम्पनी को विहित वैधानिक व्यवस्था का पालन करना आवश्यक है, जिसका पालन अपीलार्थी कम्पनी द्वारा नहीं किया गया है । अत: अपीलार्थी कम्पनी का उक्त कृत्य म.प्र. देशी स्प्रिट नियमों के नियम 4(4) व सी.एस. 1 लायसेंस की शर्त क्रमांक 3 का उल्लंघन होकर नियम 12(1) के तहत दण्डनीय होने के कारण अधीनस्थ न्यायालय द्वारा अपीलार्थी कम्पनी पर 15,000/- रूपये शास्ति अधिरोपित करते हुए अपीलार्थी कम्पनी द्वारा देशी मदिरा स्टोरेज मद्यभाण्डागारों मुरैना एवं अम्बाह पर प्रश्नाधीन अवधि में कुल 376 दिवस कांच की बोतलों में एक दिवस के औसत प्रदाय का 25 प्रतिशत संग्रह नहीं रखने से 250/- रूपये प्रतिदिन के मान से 94,000/- रूपये अधिरोपित करते हुए कुल 1,09,250/- रूपये जमा करने के जो आदेश दिये गये हैं, वह उचित होने से उसमें हस्तक्षेप की कोई आवश्यकता नहीं है । दर्शित परिस्थिति में अपीलार्थी कम्पनी द्वारा प्रस्तुत तर्क मान्य किये जाने योग्य नहीं है ।

6/ उपरोक्त विवेचना के आधार पर आबकारी आयुक्त, म.प्र. ग्वालियर द्वारा पारित आदेश दिनांक 12-11-2018 स्थिर रखा जाता है । अपील निरस्त की जाती है ।

(मनोज गोयल)
अध्यक्ष
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