

Rajasthan Tax Board, Ajmer

Appeal (Excise) No. 125/2018/Alwar

M/s Ajenta Chemicals (India) Ltd.,
120, MIA, Alwar (Raj.)

.....Appellant

VERSUS

1. Excise Commissioner,
Rajasthan, Udaipur

2. District Excise Officer, Alwar

.....Respondents

D.B.

SHRI K.L. JAIN, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Aishwarya Anand, Advocate

for Appellant

Shri Anil Pokhrana,

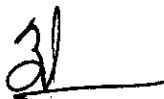
Dy. Govt. Advocate

for Respondents

Dated : 02/11/2018

JUDGMENT

1. This appeal has been filed by the appellant under section 9A(1)(b) of the Rajasthan Excise Act, 1950 (hereinafter called the "Act") against order of the Excise Commissioner, Rajasthan, Udaipur (hereinafter called the "Commissioner") dated 29.05.2013, who imposed a license fee amounting to Rs. 5,00,000/- on the appellant under Rule 72-B of the Rajasthan Excise Rules, 1956 (hereinafter called the "Rules") for alleged change in ownership and management of the licensee. Aggrieved of the said order the appellant has filed this appeal.
2. Brief facts leading to the present appeal are that the appellant is a public limited company incorporated under the Companies Act, 1956, engaged in manufacturing and distribution of Country Liquor and IMFL in the State of Rajasthan. The appellant's operations remained closed for sometime and later the directors and some share holders of the company got





changed and the new management recommenced the manufacturing activities for which the renewal fees as applicable has been deposited by it. However, the respondent no. 1 has ordered that as the appellant company's ownership and management has changed, therefore, in light of the provisions of Rule 72 B, a license fee for transfer of the license has to be paid by the appellant and in accordance with the impugned order, the appellant has deposited Rs. 5,00,000/- on 31.07.2013 towards this demand.

3. Aggrieved of the said order the appellant preferred this appeal before the Tax Board under section 9A of the Act. Learned counsel for the appellant submits that the appellant company has been incorporated under the Companies Act, 1956 in the name of Ajenta Chemicals (India) Ltd. and it continues to bear the same name. However, due to some compelling reasons, the operations of the companies remained closed for some time and after change in shareholding pattern and management, the license was renewed by the impugned order dated 29.05.2013. However, the Commissioner levied an additional license fee under Rule 72 B for transfer of license, but in effect there was no transfer of license as such. He further submits that a 'company' is a separate legal juristic person and any change in shareholding of the company or its management does not change the status of the company as a 'legal juristic person', therefore, the respondents have erred in imposing a license fee under Rule 72 B which is strictly for transfer of any license. So, he requests that order of the respondent no. 1 in this respect may be set aside. Moreover, in the present case, no transfer of license has taken place, therefore, the additional license fee as levied by the respondents and deposited by the appellant, is refundable which may be ordered to be refunded.





4. Learned Deputy Government Advocate appearing for the respondent revenue supported orders of the lower authorities and requests to reject the appeal.
5. Heard the learned counsels for both the parties and also perused the relevant record. This fact is not in dispute that the appellant is a company registered under the Companies Act, 1956 having its registered office at 120, MIA, Alwar (Raj.) and the same was granted license by the respondents for manufacturing and distribution of Country Liquor and India Made Foreign Liquor (IMFL). Due to certain reasons, the operations of the appellant remained closed for some time and after the new management took over, the license was renewed for another 7 years. However, the respondent no. 1 imposed Additional License Fee for transfer of license under Rule 72 B.
6. The said Rule 72 B provides that no license shall be sold or transferred without obtaining previous permission from the licensing authority and such permission shall not be accorded unless an amount equal to 50% of the license fee has been paid. For ready reference, this rule is reproduced hereunder:

"72 B. Transfer of a license- (1) Every license shall be deemed to have been granted or renewed personally to the licensee and no licence shall be sold or transferred without obtaining previous permission in writing from the licensing authority and such permission shall not be accorded unless an amount equal to 50% of the license Fee has been paid.

Provided that addition (s) or deletion (s) or substitution (s) of name (s) of co-licencees constituting a particular licence in or from running licence shall be sanctioned by the Licensing Authority on such terms and conditions as he thinks fit.

Provided further that addition or deletion or substitution of name(s) of co-licencees in a licence shall not be made, if such licence has been granted by the procedure of drawing of lots.



(2) If during the currency of a licence, the licensee desires to transfer his business to a new premises, he shall intimate his intention to the licensing authority at least 15 days in advance, and get his licence suitably amended. The licence shall thereupon hold good in a respect of new premises.

(3) Every licensee of a licence shall be liable jointly and severally for all kinds of dues of Excise Department and other liabilities, whatsoever, in respect of licence granted.

(4) In the event of death of licensee, the transfer of licence may be considered by the Licensing Authority in the name of such legal heir (s),....."

7. This rule provides that every license is deemed to have been granted or renewed personally to the licensee and no license can be sold or transferred without obtaining prior permission of the licensing authority. The said licensing authority may permit such licensee to transfer the license on payment of the license fee which is equal to 50% of the normal license fee. In the present case, the license has been granted in the name of the appellant company i.e. Ajenta Chemicals (India) Ltd. and the said license has, in no way, been sold or transferred to another entity, therefore, there is no question of invoking Rule 72 B (1) for levy of license fee for transfer of the license. The respondent no. 1 has grossly erred in law and substance to have invoked this rule when there was no transfer of the license. It is also noteworthy that a company is a separate legal juristic person having its independent identity from its shareholders and its management. So, if there is any change in shareholding or management of the company, the legal status of the company as a 'legal juristic person' remains unchanged and in such a situation, the licensee for the purpose of the Excise Act too, shall not be considered to have changed. It is, therefore, held that the respondent no. 1 has grossly erred in levying the license fee



of Rs. 5,00,000/- for alleged transfer of a license, which is not the case here, so the impugned order deserves to be set aside.

8. Accordingly, the impugned order dated 29.05.2013 is set aside to the extent discussed above and the appeal is allowed with the direction to the respondents to refund the said Rs. 5,00,000/- to the appellant within one month of receipt of this order.
9. Order pronounced.



(Omkar Singh Ashiya)
Member



(K.L. Jain)
Member