

Rajasthan Tax Board, Ajmer

Appeal (Excise) No. 472/2015/Alwar

Shri Kashmir Singh S/o Karnail
Singh, NawaPind, P.S. Chander,
Amritsar, Punjab

...Appellant

VERSUS

1. Commissioner of Excise,
Rajasthan, Udaipur
2. Additional Commissioner
Excise, Zone - Jaipur
3. District Excise Officer, Alwar

.....Respondents

D.B.

SHRI K.L. JAIN, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Abhishek Ajmera, Advocate

for Appellant

Shri Anil Pokhrana,


Dy. Govt. Advocate

for Respondents

Dated :14/06/2018

JUDGMENT

1. This appeal has been filed by the appellant under section 9(A) of the Rajasthan Excise Act, 1950 (hereinafter called the "Act") against order of the Commissioner of Excise, Rajasthan, Udaipur (hereinafter called the "Commissioner") dated 26.09.2014, who imposed a fine amounting to Rs. 8,00,000/- on the appellant under section 69 of the Act, in lieu of confiscation of his vehicle which was found to have illegally transported the liquor. Aggrieved of the said order the appellant has filed this appeal. Later, the appellant has submitted additional grounds of appeal and has prayed to direct the respondents to refund the amount deposited towards the fine imposed by the impugned order.



2. Brief facts leading to the present appeal are that the appellant is owner of the Truck No. PB-02-BJ-9643. This truck was checked by the Excise Preventive Force, Behror, District Alwar on 20.03.2014 and on search of this vehicle 880 cartons of IMFL were found to be carried illegally in the vehicle and this liquor bore the mark "for sale in Punjab only" on the cartons, therefore, the said IMFL was seized and a case under section 14/54 and 19/54 of the Act, was registered. Since the vehicle was used for carrying/transporting the liquor illegally, therefore, the competent authority seized the vehicle under section 45 of the Act. The Commissioner vide his order dated 26.09.2014 imposed a fine under section 69(4) of the Act amounting to Rs. 8,00,000/-, in lieu of confiscation of the said vehicle.
3. Aggrieved of the said order the appellant preferred this appeal before the Tax Board under section 9A of the Act along with an application for stay of recovery of the outstanding penalty i.e. Rs 2,00,000/-. The Tax Board vide its order dated 10.04.2015 granted a stay on recovery of the outstanding demand. In the meantime, the respondent no.3 proceeded to auction the said vehicle on 20.03.2015 for Rs 8,05,000/- and the said amount has been deposited with the respondents by the successful bidder. The appellant thus filed additional grounds of appeal on 07.09.2016 requesting to refund Rs 6,00,000/- as deposited by him in lieu of confiscation of the vehicle.
4. Learned counsel for the appellant submits that in compliance of the Commissioner's order dated 26.09.2014, the appellant deposited 75% of the penalty amount i.e. Rs. 6,00,000/- and for the remaining amount of Rs. 2,00,000 the stay application was moved before the Rajasthan Tax Board and the stay was granted on recovery vide Tax Board (D.B.) order dated 10.04.2015. But in the meantime, the respondents confiscated

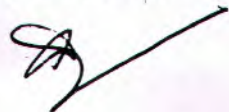
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and auctioned the vehicle and realized the auction amount of Rs. 8,05,000 from the successful bidder. He, therefore, requests to refund the amount deposited by the appellant as 'fine in lieu of confiscation' of the said vehicle, i.e. Rs. 6,00,000/-.

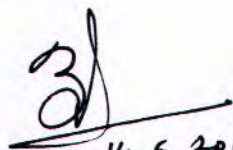
5. Learned Deputy Government Advocate appearing for the respondent revenue supported orders of the lower authorities and requests to reject the appeal.
6. Heard the learned counsels for both the parties and also perused the relevant record. This fact is not in dispute that vehicle in question was found illegally carrying/transporting 880 cartons of IMFL in the State of Rajasthan as the same was meant "for sale in Punjab only". The Commissioner has imposed a fine on owner of the said vehicle under section 69(4) of the Act vide the impugned order. As this order was passed after giving option to the appellant to deposit the fine in lieu of confiscation of the vehicle, as stipulated under section 69 of the Act, so in our considered view, there is no infirmity in the impugned order as such.
7. On perusal of the facts on record, it is apparent that the appellant has filed appeal against order of the Commissioner, dated 26.09.2014 but later he filed a miscellaneous application and 'additional grounds of appeal', and requested that as the vehicle has already been auctioned by the respondents, therefore, amount deposited by him i.e. Rs. 6,00,000/-, is refundable to him and prayed to issue appropriate directions to the respondents for the same.
8. It is also evident that the respondents on the one hand have imposed a fine of Rs. 8,00,000/- in lieu of confiscation of the vehicle and out of that realized Rs. 6,00,000/- as deposited by the appellant, and on the other hand, they have confiscated and auctioned the vehicle and have also realized the auction

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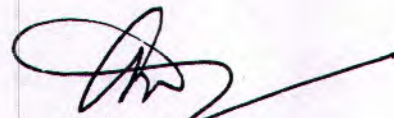
money from the successful bidder. In such an eventuality they ought to have refunded Rs. 6,00,000 to the appellant.

9. After considering the facts and circumstances of the case it is held that, though, there is no infirmity in the impugned order as such, but as the respondents have proceeded to confiscate the vehicle, and by virtue of this action (confiscation and auction of the vehicle) the earlier action of the respondents i.e. imposition of fine in lieu of confiscation, automatically stands negated, therefore, whatever the amount was deposited by the appellant towards the 'fine' as imposed u/s 69(4) of the Act, stands refundable to the appellant. Accordingly, the respondents are directed to refund the said amount of Rs. 6,00,000/- to the appellant within a period of one month from the date of this order.
10. Accordingly, the appeal is partly allowed with the directions as above.
11. Order pronounced.



14.6.2018

(Omkar Singh Ashiya)
Member



(K.L. Jain)
Member