IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22420-2016 (O&M)
Date of decision:- 21.03.2017

M/s Nirvair Singh
...Petitioner

Versus

Financial Commissioner Taxation, Punjab Civil Secretariat-I, Punjab, Sector 1, Chandigarh and another.
...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Rai Singh Chauhan, Advocate, for the petitioner.

Mr. Sukhdip Singh Brar, Additional Advocate General, Punjab.

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S.J. VAZIFDAR, C.J. (ORAL)

The petitioner has sought a writ of certiorari to quash orders dated 03.08.2016 and 13.05.2016 passed by respondents No. 1 and 2 i.e. the Financial Commissioner Taxation, Punjab and the Collector-cum-Deputy Excise and Taxation Commissioner, Ferozepur Division.

2. The question that arises in this petition is whether the appellate authority is entitled to enhance the penalty in an appeal filed by the assessee under Section 14 of the Punjab Excise Act, 1914 (in short the Act).

3. The petitioner was granted an L-14A license entitling it to conduct retail business in country liquor. By an order dated 13.05.2016, respondent No. 2 – Collector-cum-Deputy Excise and Taxation Commissioner, Ferozepur Division held that the petitioner had violated the excise rules making itself

liable for punishment under the Act including the cancellation of the license. However, keeping in view the government revenue and to ensure the supply of liquor to the public, respondent No. 2 ordered the petitioner's liquor vend to be suspended from 13.05.2016 to 19.05.2016. The petitioner challenged this order in an appeal under Section 14 of the Act before the Excise and Taxation Commissioner. By an interim order dated 18.05.2016, the Excise and Taxation Commissioner stayed the operation of the order dated 13.05.2016 subject to the petitioner paying ₹ 1 lac. The petitioner paid the amount of ₹ 1 lac and availed the benefit of the order. Ultimately, the Excise and Taxation Commissioner by an order dated 03.08.2016, dismissed the appeal.

4. The dismissal of the appeal has not been challenged before us. The petitioner has restricted the challenge to the order in so far as the Excise and Taxation Commissioner imposed "an additional penalty of ₹ 4 lacs over and above the previous penalty of ₹ 1 lac".

5. It must be clarified that the amount of ₹ 1 lac was not a penalty, but only a payment enabling the petitioner to avail of the benefit of the stay order dated 18.05.2016. The question is whether the Excise and Taxation Commissioner was entitled in the petitioner's appeal under Section 14 to impose an additional penalty. In our view, he was not.

6. Section 14 of the Punjab Excise Act reads as under:-

> "14. Appeal- An appeal shall lie from an original or appellate order of any excise officer in such cases or classes of cases and to such authority as the [State] Government shall by notification declare."

7. Section 14 does not confer a power upon the appellate authority to pass an order more burdensome than the order appealed against. It does not entitle the appellate authority to enhance the penalty. Our attention was not invited to any other provision of the Act that indicated such a power either. Absent a power to the contrary conferred by a statute, an appellate authority cannot grant a relief in favour of the respondent. It can either confirm the order appealed against or set it aside. It can also modify the order, but not to the further detriment of the appellant except as to an order for costs.

Where the Legislature intends conferring a power upon an appellate or revisional authority to enhance the relief in favour of the respondent, it does so specifically. For instance, Sections 128 and 128-A of the Customs Act, 1962 (in short the Customs Act) confer such a power. Sub-section (3) of Section 128-A of the Customs Act confers the power upon the Commissioner (Appeals) to enhance the penalty. This is evident from the first proviso to sub-section (3) of Section 128-A which stipulates that an order enhancing any penalty or fine in lieu of confiscation shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed enhancement. The word “modifying” in the opening part of sub-section (3), therefore, includes an order enhancing the penalty and it is for this reason that the first proviso requires an order enhancing the penalty not to be passed unless the appellant has been given a reasonable opportunity of showing cause against the same. The Punjab Excise Act does not confer such a power upon the appellate authority. The impugned order enhancing the penalty was, therefore, without jurisdiction.

8. The petition is, therefore, allowed to the extent of quashing the imposition of penalty of ₹ 4 lacs. It is clarified that this order does not operate against or in respect of the sum of ₹ 1 lac paid by the petitioner pursuant to the stay order dated 18.05.2016.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

21.03.2017
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No