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C.A.No. 4975 OF 1999
ITEM No.111

Court No. 1

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 4975 of 1999

M.P. Purushothaman

...Appellant(s)

vs.

Govt. of A.P. & Ors.

...Respondent(s)

(with office report)

Date: 18/03/2004 This/These matter(s) was/were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. Harish N Salve, Sr. Adv.
Mr. Sumit Goel, Adv.
for M/s. P H Parekh & Co., Advs.

For Respondent (s)Ms. K Amareswari, Sr. Adv.
Ms. T Anamika, Adv.
Mr. Guntur Prabhakar, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order. There shall be no order as to costs.

(D.P. WALIA) (JANKI BHATIA)
COURT MASTER COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4975 OF 1999

M.P. Purushothaman... Appellant

vs.

Govt. of A.P. & Ors.... Respondents

O R D E R

The appellant herein submitted an application to the Commissioner of Excise, Andhra Pradesh, Hyderabad, requesting him to issue a letter of intent in Form B-5 for setting up a factory for manufacture of beer. In pursuance thereof, the Commissioner of Excise issued a letter of intent by his order dated 11.1.1993 mentioning therein the condition that the appellant should furnish a security deposit of Rs.50,000/- to the Commissioner of Excise within one month from the date of issue of letter of intent. Accordingly, the appellant submitted a demand draft in favour of the Commissioner of Excise, Andhra Pradesh, Hyderabad for a sum of Rs.50,000/- payable by the Union Bank of India on 5.2.1993. It appears that instead of delivering the said demand draft at the counter meant for the Commissioner of Excise, Andhra Pradesh, Hyderabad, the appellant's representative delivered it at the counter of Director of Distilleries and Breweries, Andhra Pradesh, which was adjacent to the said counter. Since the demand draft was not received by the Commissioner of Excise till 4.3.1993, the State Government by order dated 4.3.1993 cancelled the letter of intent issued to the appellant. The appellant herein filed a petition under Article 226 of the Constitution which was dismissed by the High Court. It is against the said judgment, the appellant is in appeal before us.

Shri Harish N Salve, learned senior counsel appearing for the appellant urged that in view of the fact, which is not disputed, that the appellant's demand draft in favour of the Commissioner of Excise, Andhra Pradesh, Hyderabad, was delivered at the counter of Director of Distilleries and Breweries who is subordinate to the Commissioner of Excise, there is a substantial compliance of the requirement of the relevant Rules and the letter of intent issued in favour of the appellant ought not to have been cancelled. We find substance in this argument.

Rule 4(2)(c) of Andhra Pradesh Brewery Rules, 1970 runs as under :

"When the Government are satisfied of the proposed scheme of the applicant, they may accord the sanction and communicate it in the form of Letter of Intent in Form B-5 stipulating a condition that the applicant should furnish security deposit to the Commissioner of Excise in the shape of a Demand Draft for Rs.50,000/- (Rupees Fifty thousand only) obtained in favour of the Commissioner of Excise from a Scheduled Bank within one month from the date of issue of Letter of Intent failing which the Letter of Intent stands cancelled. The Letter of Intent shall be valid initially for a period of two years from the date of issue. The security deposit will be forfeited to the Government in case the holder of Letter of Intent fails to convert it into a licence. In case the applicant desires to construct and work the brewery on the same Letter of Intent, another security deposit for Rs.50,000/- has to be deposited with the Commissioner. On receipt of such security deposit, the Government can extend the validity of letter of intent for further period of two years, within which the holder should convert it into the licence, after securing the land, buildings, plants, machinery and equipment required for construction and working a Brewery as per the scheme notified to the Government or as modified by the Government as the case may be under clause (a);"

A perusal of the above-quoted Rule shows that the security deposit is to be made to the Commissioner of Excise in the shape of demand draft for a sum of Rs.50,000/- obtained in favour of the Commissioner of Excise from a scheduled bank within one month from the date of issue of letter of intent. It is not disputed that the appellant furnished security deposit by way of demand draft of Rs.50,000/- obtained in favour of the Commissioner of Excise from a scheduled bank within one month which was delivered at the counter of Director of Distilleries and Breweries. Rule 4(2)(c) must be construed strictly. By reason of the said provision, an applicant is required to furnish security deposit in the shape of a demand draft obtained in favour of the Commissioner of Excise from a scheduled bank. It does not say that it has to be delivered to the Commissioner of Excise personally. The Director of Distilleries and Breweries, indisputably, is an officer subordinate to the Commissioner of Excise. It was not the case of the respondents that the Director of Distilleries and Breweries was not authorised to accept the said demand draft. In any event, the demand draft having been delivered to one of the subordin

ates of the Commissioner of Excise, the Director of Distilleries & Breweries, as a public officer, had a duty to place the same before the appropriate authority without any delay. Furthermore, the very fact that an order of cancellation of letter of intent was required to be issued which has, in fact, been done by reason of an order dated 4.3.1993 by the State Government, is itself suggestive of the fact that even the respondents herein did not consider the said provision to be imperative in character. It is now well settled that normally a statutory directive to comply with a direction is ordinarily not construed to be a mandatory provision. If any provision is mandatory, in certain circumstances strict compliance thereof is not insisted. In Crawford's Interpretation of Laws (Article 461 at page 539), the law is stated thus:

" 271. Miscellaneous Implied Exceptions from the Requirements of Mandatory Statutes, In General.- Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their justification in considerations of justice. It is a well known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient calibre to excuse or justify a technical violation of the law."

We are, furthermore, of the view that the mistake was not intentional and in any case the demand draft was in favour of the Commissioner of Excise which was deposited before an officer who is subordinate to the Commissioner of Excise and, therefore, there was substantial compliance of requirement of Rule 4(2)(c) of the Rules.

In that view of the matter, the order of the High Court under challenge as well as the order dated 4th March, 1993 of the State Government cancelling the letter of intent issued in favour of the appellant, are set aside. The appeal is allowed. The Commissioner of Excise will now proceed with the matter in accordance with law. There shall be no order as to costs.

.....CJI(V.N.KHARE)

.....J
(S.B. SINHA)

.....J
(S.H. KAPADIA)
New Delhi;
March 18, 2004.