

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No. 1583 of 2021

Amit Goyal

.....Petitioner

Vs.

State of Uttarakhand & others

.....Respondents

Mr. Shubham Chhabra, Advocate, for the petitioner.

Mr. Ajay Singh Bisht, Additional CSC, for the State of Uttarakhand.

Hon'ble Sharad Kumar Sharma, J (Oral)

The petitioner has earlier approached the High Court by filing a writ petition being WPMS No.1145 of 2020, "Amit Goyal Vs. State of Uttarakhand & others", as against the order of 13.07.2021, cancelling his licence for running the liquor shop situated at Kashipur Road, Near Galla Mandi, Rudrapur, District Udham Singh Nagar, which was awarded to him in accordance with the Policy of the 22.02.2020.

2. The aforesaid writ petition was dismissed by the Coordinate Bench of this Court holding it to be premature and simultaneously observing that as against the order of the cancellation of the licence, the petitioner had a remedy of preferring an appeal, under Section 11 of the Excise Act.

3. In accordance with the pleadings which has been raised in paragraph No.20, of the writ petition, the petitioner has preferred a writ petition being WPMS No.1284 of 2021, seeking refund of the minimum monthly guarantee duty for the period of ten days, as referred therein, which is pending consideration before this Court.

4. During the intervening period on account of the non remittance of the minimum monthly guarantee amount, the licence of the petitioner was cancelled by an order of 01.07.2021, against which, the petitioner has already preferred an appeal under Section 11 of the

U.P. Excise Act, 1910, and the same is pending consideration before the Appellate Authority i.e. the Excise Commissioner.

5. The present writ petition has been preferred with the following relief:-

“(i) Issue a writ order or direction in the nature of certiorari quashing the impugned recovery citation dated 06.01.2021 passed by the respondent No.6.

(ii) Issue a writ or order in the nature of mandamus directing the respondents to stay the proceeding of recovery citation passed by the respondent no.6.

(iii) Issue a writ or order in the nature of mandamus directing the respondent no.3/Excise Commissioner to decide the application filed by the petitioner under Section 11 of the U.P. Excise Act, 1910, for seeking relaxation of the condition regarding deposit of the twenty five percent of the outstanding amount, as expeditiously as possible within time bound period as this Hon’ble court deem fit and proper.”

6. In fact the principal cause of action, which has been derived by the petitioner for the purposes to file the writ petition, is on the pretext that the recovery citation has been issued by the respondent No.6, for the recovery of the amount of Rupees Eighty Two Lakh Only. Subsequently, as a consequence of the cancellation of his licence, the recovery citation dated 06.01.2021, has been issued. Against which, the petitioner has already preferred an appeal under Section 11 of the Act, which is pending consideration along with his application seeking a waiver to comply with the mandatory conditions of deposit of 25% of the demanded amount, as provided under the proviso of Section 11 of the Act, of the depositing of 25% of the amount.

7. Apparently, in pursuance to the allotment made of the liquor shop, as referred above, this is 3rd phase of litigation by way of the present writ petition. Since there happens to be a prior pending appeal, which is pending consideration, and what implications will it have on the Recovery Citation dated 06.01.2021, would be one of the factors which has to be considered by the Appellate Authority. Hence

this Court at this stage is not venturing into that prospective and the legal implications of the Recovery Citation dated 06.01.2021.

8. However, this writ petition would stand disposed of exclusively confined on the limited ground that the petitioner's application for waiver to deposit the mandatory deposit of 25% under the proviso to Section 11 of the U.P. Excise Act, 1910, it would be considered by the Excise Commissioner as expeditiously as possible, but not later than one month from today and would take an appropriate decision on the same exclusively in accordance with law.

(Sharad Kumar Sharma, J.)
12.08.2021

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