



GOVERNMENT OF KERALA

Abstract

Taxes Department- Excise- Revision Petitions submitted by M/s Dhanya Residency and M/s Dhanya Tourist Home, Adimaly, Idukki, represented by its Managing Partner Sri.K.V.Jose-Disposed of - Orders issued- Reg.

TAXES(A)DEPARTMENT

G.O.(Rt)No.260/2024/TAXES Dated,Thiruvananthapuram, 15-03-2024

Read 1 Order No. XC6-16539/13 dated 20/06/2013 of the Excise Commissioner.

2 Order No. PPRRAMBD/2023/00054 dated 28/12/2023 of the Excise Commissioner.

3 Revision Petition submitted by M/s Dhanya Tourist Home, Adimali, Idukki District represented by its Managing Partner, Sri.K.V.Jose dated 03/01/2024.

Revision Petitions submitted by M/s Dhanya Residency, 4 Adimali, Idukki District represented by its Managing Partner, Sri.K.V.Jose dated 03/01/2024.

5 Letter No. EXC/6112/2023-XC6 dated 19/02/2024 from the Excise Commissioner.

Letter dated 20.2.2024 from M/s Dhanya Residency, 6 Adimali, Idukki District represented by its Managing Partner, Sri.K.V.Jose.

ORDER

The Managing Partner of M/s Dhanya residency, M/s Dhanya Tourist Home, Adimaly, Idukki represented by Sri.K.V.Jose, Managing Partner has submitted revision petitions read as 3rd and 4th paper above under

Rule 40 of FL rules before Government aggrieved by the orders of the Excise Commissioner read as 1st and 2nd paper above regarding the fine and fee imposed to the firms. The petitioner has also requested for a hearing and to set aside the orders of the Excise Commissioner imposing a fine of Rs. 7 lakhs each, on various grounds and pass an order to refund the amount or adjust the same with future liabilities of the firm.

2) As requested by the petitioner, a hearing was fixed on 20.2.2024. But the petitioner did not appear for the hearing and informed as per the letter read as 6th paper above that he is not interested in personal hearing and requested to consider the averments in the revision petition as their argument note.

3) In the revision petition read as 3rd paper above, the petitioner submitted that FL.3 license was originally granted to M/s Dhanya Tourist Home, Idukki in 1985 in the name of Sri. K.V Peter, Managing Partner of M/s Dhanya Tourist Home. At the time of granting of FL.3 license to the hotel, the partners of the firm were Sri.K.P.Varkey, Sri.K.V Peter, Sri.K.V Jose and Sri.Renny George. The partnership of the firm was reconstituted on 01-03-2002 without obtaining sanction from the Excise Commissioner by the way of retirement of Sri.K.P.Varkey. Sri. K.V Peter, the then licensee, expired on 13-06-2013. Subsequently an application was submitted before the Excise Commissioner on 15-06-2013 by Sri. K.V Jose, partner of M/s Dhanya Tourist Home to change the name of licensee to his name and to regularize the unauthorized reconstitution made in the partnership firm on 01-03-2002.

4) The Excise Commissioner, as per the order read as 1st paper considered the application for regularizing the unauthorized reconstitution made in the partnership firm of M/s Dhanya Tourist

Home on 01-03-2002 by imposing a fine of Rs 3,00,000/- as per Section 67 (2) & (3) of the Abkari Act and fee of Rs 2,00,000/- as per the then existed proviso to Rule 19 (iv) of Foreign Liquor Rules above and sanction was also accorded to change the name of licensee to the name of Sri. K.V Jose by realizing a fee of 2,00,000/- as per Rule 19 (iv) of Foreign Liquor Rules. The petitioner remitted total amount of Rs.7 lakh . In the revision petition, it is submitted that the imposition of Rs.7 lakhs is illegal and unsustainable since the reconstitution was done on 01.03.2002, then there was no law of compounding by imposing fine and the imposition of Rs.2 lakh for retirement of one of the partners on 01.03.2002 is also not applicable because the 2nd proviso to Rule 19(iv) was not available on 01.03.2002. As far as the imposition of Rs.2 lakhs alleging transfer of license is also illegal because there is no transfer of license till the amendment on 01.04.2018 as decided by the Hon'ble High Court of Kerala in various decisions that the change of name of personnel will not amount to transfer of license and the partnership firm continues to be the licensee and petitioner is entitled to get the refund/adjustment of Rs.7 lakhs paid.

5) In the revision petition read as 4th paper above, the petitioner submitted that though the legal heirs of K.V.Peter who died on 30.06.013 gave consent for change of name of personnel to represent the license into the name of K.V.Jose, they demanded to include in the partnership as partners. Hence the legal heirs of K.V.Peter were included as partners in the capacity as legal heirs of deceased partner, K.V.Peter. The then partner of M/s Dhanya Tourist Home, Smt. Lisamma Peter, expired on 26-09-2019, and the partnership of the firm was subsequently reconstituted as per the partnership deed dated 09-01-2020 by removing the deceased partner Smt. Lisamma Peter and by inducting the legal heirs of the deceased partners namely Sri.Varghese

Peter, Sri.Roney peter, and Sri.Jose Peter and by changing the designation of Sri. Renny George to Managing partner. And new partnership firm was registered in the name and style M/s Dhanya Residency. The Petitioner firm applied for regularization of the reconstitution done on 09.01.2020 and also to change the name of the partnership into M/s.Dhanya Residency in the place of M/s Dhanya Tourist Home. The Excise Commissioner passed order read as 2nd paper above for regularizing the unauthorized reconstitution made in the partnership firm of M/s Dhanya Tourist Home on 09-01-2020 by imposing Rs.300000/- as fine under section 67 (2) of the Abkari Act and fee of Rs.100000/- under Rule 19 (iii) of Foreign Liquor Rules. Sanction was also accorded to transfer the FL.3 license of the hotel from the partnership firm M/s. Dhanya Tourist Home to the newly registered partnership firm M/s. Dhanya Residency by realizing fee of Rs.100000/- under Rule 19 (i), (ii) & (iii) of Foreign Liquor Rules. Sanction was also accorded to change the name of licensee of the hotel which was granted in the name of Sri.K.V Jose in the capacity of Managing Partner, M/s Dhanya Tourist Home to the name of Sri. K.V Jose, in the capacity of Managing Partner, M/s Dhanya Residency by realizing a fee of Rs.200000/- as per Rule 19 (iv) of Foreign Liquor Rules. Petitioner claimed that the reconstitution done on 09.01.020 is only inclusion of the legal heirs of the deceased partner K.V.Peter and hence the imposition of Rs.3 lakhs is illegal as the inclusion of the legal heirs as per the reconstitution on 09.01.2020 will not have effect of sale, transfer or sub-renting of a license of the existing partnership firm. The person representing the license is not changed and still continues even from 01.03.2002. Hence Rule 19(ii) has no application for taking sanction under Rule 19(ii) of the F.L. Rules. There is no provision to impose Rs.1 lakh for the change of name of the partnership. Hence the

imposition of Rs.1 lakh on that count is illegal.The imposition of Rs.2 lakhs treating the change of name of license is also incorrect because Sri.K.V.Jose is continuing to represent the license. There is only change of name of partnership from M/s Dhanya Tourist Home into M/s.Dhanya Residency. Since the inclusion of the legal heirs of the deceased partner is not treated as a reconstitution of the firm, the imposition of Rs.1 lakh as per Rule 19(iii) of the F.L. Rules for regularization is also unsustainable.

6) As per letter read as 5th paper above, the Excise Commissioner reported that, the fee and fine levied as per order referred 1st paper above for regularizing the unauthorized reconstitution made in the partnership of M/s Dhanya Tourist Home and for changing name of licensee were as per the then existed provisions of the Act and Rules at the time of consideration of the application. FL.3 licence was originally granted to M/s Dhanya Tourist Home, Idukki in 1985 in the name of Sri. K.V Peter, Managing Partner of M/s Dhanya Tourist Home. At the time of grant of FL.3 licence to the hotel, the partners of the firm were K.P.Varkey, K.V Peter, K.V Jose and Renny George. The partnership of the firm was reconstituted without obtaining sanction from the Excise Commissioner on 01-03- 2002 by the way of retirement of Sri. K P Varkey. The fact was not informed to the Excise Commissioner till the death of the then licensee, Sri. K.V Peter.T he then licensee, Sri. K.V Peter expired on 13-06-2013. Subsequently an application was submitted on 15-06-2013 by Sri. K.V Jose, partner of M/s Dhanya Tourist Home to change the name of licence to his name and to regularize the unauthorized reconstitution made in the partnership on 01-03-2002. As per order read as 1st paper above , the Excise Commissioner passed orders regularizing the unauthorized

reconstitution made in the partnership of M/s Dhanya Tourist Home on 01-03-2002 by imposing fine of Rs 3,00,000/- as per Section 67(2)&(3) of the Abkari Act and fee of Rs 2,00,000/- as per the then existed proviso to Rule 19(iv) of Foreign Liquor Rules since the firm did not possess star Classification. Sanction was also accorded to change the name of licensee to the name of Sri. K.V Jose by realizing fee of 2,00,000/- as per Rule 19(iv) of Foreign Liquor Rules. The fee of Rs.200000/- imposed for reconstitution was as per the then existed second proviso of Rule 19(iv) of FL Rules, which was in force from 18-04-2012 to 01-04-2018. The fine imposed for reconstitution was as per section 67(2) of the Abkari Act. The fine existed at the time of consideration of the application was Rs.300000/-. The fee levied for changing the name of licensee was as per Rule 19(iv) of Foreign Liquor Rules. The fee existed at the time of consideration of the application was Rs 200000/-. The revision is filed against the order which was passed in the year 2013,i.e. after the lapse of almost 11 years. The matter was considered and fees and fine was imposed as per the Rules. The petitioner has already remitted the said amount. No objection was raised by the petitioner at that time. The said matter has become final and no revision will lie.

7) The Excise Commissioner has also reported that, the partner of M/s Dhanya Tourist Home, Lisamma Peter, expired on 26-09-2019, and the partnership of the firm was subsequently reconstituted as per the partnership deed dated 09-01- 2020 by removing the deceased partner Lisamma Peter and by inducting the legal heirs of the deceased partners namely S/Sri.Varghese Peter, Roney peter, and Jose Peter and by changing the designation of Sri. Renny George to Managing partner. The Excise Commissioner has reported that, when the

partnership deed dated 09-01-2020 was registered in the Registrar of firms, instead of making the changes in the original partnership, a new partnership was registered in the name and style M/s Dhanya Residency. An application dated 5.12.2023 was submitted before the Excise Commissioner to regularize the unauthorized reconstitution made in the partnership of M/s Dhanya Tourist Home on 09-01-2020 and to get sanction to transfer the FL.3 licence of the hotel from M/s Dhanya Tourist Home to the newly registered partnership M/s Dhanya Residency. As per Rule 19(ii) of Foreign Liquor Rules, addition of partner/director or the change of name of licensee due to death of a partner/director/licensee shall also be deemed to be transfer of licence with effect from 01-04-2018. It is held by the Hon'ble Division bench of the Kerala High Court as per the decision reported in 2019 KHC 5636 Joshy PG Vs State of Kerala and Others that - *"Rule 19(ii) - A bare reading of the amendment brought into Rule 19(ii) would reveal that addition of partner/director .or the change of name of the licensee due __to the death __of partner/director/licensee could be deemed to be a transfer of licence for the purpose of Rule 19(ii) only from 01-04-2018."* Hence, as per the existing Rules, the induction of legal heirs shall also be considered as reconstitution from 01-04-2018. As per the original deed submitted by the licensee for getting the FL.3 licence, the name of the firm was Dhanya Tourist Home, and later the licensee has modified the deed by changing the name of the firm to Dhanya Residency, and hence licensee is liable to remit fine under section 67(2) of the Abkari act for this violation. Subsequently, after hearing the licensee as per Section 67(1) of the Abkari Act, Excise Commissioner passed orders read as 2nd paper above, regularizing the unauthorized reconstitution made in the partnership of M/s Dhanya Tourist Home on 09-01-2020 by imposing Rs.300000/- (Three Lakhs only) as fine under

section 67(2) of the Abkari Act and fee of Rs.100000/- (One Lakh only) under Rule 19(iii) of Foreign Liquor Rules. Sanction was also accorded to transfer the FL.3 licence of the hotel from the partnership firm M/s. Dhanya Tourist Home to the newly registered partnership firm M/s. Dhanya Residency by realizing fee of Rs100000/- (One lakh only) under Rule 19(i),(ii) & (iii) of Foreign Liquor Rules. Sanction was also accorded to change the name of licensee of the hotel which was granted in the name of Sri. K.V Jose in the capacity of Managing Partner, M/s Dhanya Tourist Home to the name of Sri. K.V Jose, in the capacity of Managing Partner, M/s Dhanya Residency by realizing fee of Rs.200000/- (Two lakhs only) as per Rule 19(iv) of Foreign Liquor Rules.

8) Government have examined the matter in detail. In any action licensed under the Abkari Act, the provision for reorganization, alteration or modification, regularization with penalty was inserted in the Abkari Act 1077 as section 67 under the Finance Act, 2002 with effect from 01-04-2002.

Rule 19 of the Foreign Liquor Rules, 1953 is as follows.

19.(i) under no circumstances shall any license obtained under this notification be sold, transferred or sub rented without the previous sanction of the Excise Commissioner.

(ii) Reconstitution of partnership by addition or deletion of members or reconstitution of Directors in a Company resulting in change of ownership which owns/manages or operates any license issued under this rule shall be deemed to be transfer of license. Addition of partner/director or the change of name of the licensee due to death of a partner/director/licensee shall also be deemed to be

transfer of license.

(iii) Reconstitution of partnership/Directors of a company may be allowed on payment of Rs. 1,00,000/- (Rupees one lakh only).

9) Hon'ble Supreme Court in its judgment dated 13.01.2010 in State of Kerala Vs B.Six Holidays Resorts(P) Ltd (AIR 2010 SC(SUPP) 953) has adjudged that an application should be considered as per the law in force at the time of consideration.

10) In P.G. Joshy Vs. State of Kerala and others (WA.No.1551 OF 2018) Hon. Division Bench of Kerala High Court on 03.07.2019 has ordered as follows:

13)..... "In Radhakrishnan's case, the Division Bench held:-

"The point to be considered is whether cl.(ii) of R.19 of the Rules quoted above, will stand in the way of the partnership, in continuing the business and getting the licence renewed. If an existing partner is deleted or a new partner is inducted, then definitely, previous sanction of the Excise Commissioner is necessary. The State has the exclusive privilege to deal with intoxicated liquor and can grant it in favour of others on paying the fees, rentals etc. Having regard to the very nature of the business, strict control of the State is required to be maintained. A licence to vend foreign liquor should not fall into the hands of undesirable persons. To ensure this, we think, cl.(ii) of R.19 of the Rules is introduced. The partnership may remain the same, but, good people may be deleted and anti-social elements may be inducted, with the facade of the partnership still remaining as the same. To prevent this, the State has framed rules, requiring previous sanction of the Excise Commissioner. In this case, a person continued as the partner,

till his death. Thereafter, he is no longer a member of the partnership. Deletion did not take place, as a result of the actions of the remaining partners. By act of God, it has happened. We think, cl.(ii) of R.19 is not intended to take care of such deletion of partners, resulting out of death. It is introduced to take care of deletion by the conscious action of the partnership, by removing an existing living member. We are in full agreement with the reasoning of the learned Judge that cl.(ii) of R.19 will not apply to the facts of the case. Therefore, previous sanction of the Excise Commissioner was not necessary. In this case, we notice that there was no addition of legal heirs of the deceased person because four of his sons were existing partners.”

In this context, it is to be noted that Radhakrishnan's case was rendered by the Division Bench on 10.3.2010 and therefore, it is obvious that the Division Bench held so, prior to the insertion of the latter limb of cl. In any Act licenced under the Abkari Act, the provision for reorganization, alteration or modification, regularization with penalty was inserted in the Abkari Act 1077 as section 67 under the Finance Act, 2002 with effect from 01-04-2002. a use (ii) of Rule 19 of the FL Rules. The latter limb inserted thereafter would certainly apply in the case of addition of a partner into a partnership on the death of a partner. This position would be clear from a subsequent amendment by addition brought into Rule 19(ii) as per G.O.(P) 78/2018/TD dated 1.6.2018 published in KG(extra ord.) dated 1.6.2018 as SRO 351/2018 with effect from 1.4.2018. The said amendment by way of insertion of second limb to it, brought into force from 1.4.2018 reads as follows:-

“Addition of partner/director or the change of name of the licensee due to death of a partner/director/licensee shall also be deemed to be transfer of licence.” (underline supplied).

The second limb thus inserted to clause (ii) of Rule 19 of the FL Rules would certainly act as an indicator to the position obtained prior to 1.4.2018. A bare reading of the said amendment brought into Rule 19(ii) would reveal that addition of partner/director or the change of name of the licensee due to the death of partner/director/licensee could be deemed to be a transfer of licence for the purpose of Rule 19(ii) only from 1.4.2018. In other words, it would reveal that before the amendment, the same was not the position. If the position was the same even prior to 1.4.2018, there was absolutely no necessity to bring in such an amendment. Indisputably, the insertion of the second limb to Rule 19(ii) cannot be said to be a clarificatory one. The very purpose of amendment would reveal that it was brought out to bring the case of addition of a partner/director or the change of name of the licensee due to the death of partner/director/licensee within the deeming provision of Rule 19(ii) of the FL Rules."

11) Based on the above judgment, the contention of the petitioner that the appointment of new board of directors in place of the expired board of directors cannot be regarded as reorganization is not standing under Rule 19(ii) of the Foreign Liquor Rules, 1953."

12) As per the judgment of the Hon'ble Supreme Court dated 13.01.2010 in State of Kerala Vs B.Six Holidays Resorts (P) Ltd (AIR 2010 SC(SUPP) 953) and as per order of Hon'ble Division Bench of Kerala High Court on 03.07.2019 in P.G. Joshy Vs. State of Kerala and others (WA.No.1551 OF 2018) , the contentions of the petitioner are not standing . In the above circumstances, Government hereby confirm that the fees and fine imposed by the Excise Commissioner as per the orders read as 1st and 2nd paper above in regularizing the unauthorized

restitutions made in the partnership firm of M/s Dhanya Tourist Home , change the name of licensee, to transfer the FL.3 license of the hotel from the partnership firm M/s. Dhanya Tourist Home to the newly registered partnership firm M/s. Dhanya Residency, are in order and as per the existing rules. The review petitions submitted by Managing Partner of M/s Dhanya Tourist Home, M/s Dhanya Residency , Adimaly, Idukki represented by Sri. K.V. Jose read as 3rd and 4th paper above are disposed of accordingly.

(By order of the Governor)
PRAMOD M V
JOINT SECRETARY

To:

- 1.The Excise Commissioner, Thiruvananthapuram.
- 2.Sri.K.V.Jose, Manager Partner, M/s Dhanya Residency, Adimaly,
Idukki.
- 3.The Accountant General, (A&E/Audit),
Kerala,Thiruvananthapuram.
- 4.Web & New Media.
- 5.Stock File/Office Copy. (A1/9/2024/Taxes)

Forwarded /By order

Section Officer