

## IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-OCW-65/2020

M/s. Pernod Ricard India Pvt.Ltd. ... Petitioner

Versus

State of Goa and Ors. ... Respondents

Mr. Nakul Dewan, Senior Advocate with Mr. Kaif Noorani, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General along with Ms. Sapna Mordekar, Addl. Government Advocate for the Respondents.

Coram:- M.S. SONAK &  
SMT. M. S. JAWALKAR, JJ.

Date:- 21<sup>st</sup> July, 2020

**P. C.:**

Heard Mr. Dewan, learned Senior Advocate for the Petitioner and Mr. D. Pangam, the learned Advocate General for the Respondents.

2. In pursuance of our Order dated 17.07.2020 the petitioners, through the normal banking channels have paid to the respondents ₹6,56,26,912/-. However, Mr. Dewan points out that the respondents

in the meanwhile encashed the bank guarantee and the bank, has issued a pay order for the same amount in favour of the respondents.

3. The learned Advocate General, without prejudice submits that the respondents will return this pay order to the bank which has issued the same forthwith. He states that the respondents will write to the bank for cancellation of this pay order and consent to the discharge of the bank guarantee. This is because the amount which was secured by this bank guarantee has already been paid by the petitioners to the respondents. This statement is accepted and the respondents are directed to act accordingly.

4. The miscellaneous application now taken up seeks some reliefs in relation to notice dated 06.07.2020 by which the petitioners have been called upon to pay additional penalty in an amount of ₹6,04,00,000/- or thereabouts. Mr. Dewan points out that in response to the show cause notice dated 11.06.2020, the petitioners had applied for 14 days additional time to file response. He submits that without consideration of this request the demand notice dated 06.07.2020 came to be issued.

5. Learned Advocate General, without prejudice to the rights and contentions of the respondents submits that the demand notice dated 06.07.2020 will be withdrawn or may be taken as withdrawn and

further, 15 days time, commencing from today will be granted to the petitioners to file their response to the show cause notice dated 11.06.2020. Mr. Dewan states that the reply to the show cause notice will be filed within 15 days from today without seeking any further extensions.

6. Thereafter, it is for the respondents to decide the show cause notice in accordance with law.

7. The learned Advocate General states that replies in the main petition will be filed within two weeks from today and copies of the same will be served upon the learned counsel appearing for the petitioners. At the request of Mr. Dewan two weeks time is granted to the petitioners to file a rejoinder.

8. On the issue of release or rather the handover of the original bank guarantee by the Administrative Tribunal to the petitioners, Mr. Dewan, has very fairly and candidly submitted that whilst, there was absolutely no malafide intention on the part of the petitioners, the application seeking the return of the original bank guarantee should not have been made before the Administrative Tribunal, without pointing out to the Tribunal the order made by this Court on 12.06.2020. He however points out that the only reason why such application was in the context of what is set out in the email dated

10.07.2020 which is placed on record along with the miscellaneous application.

9. Having examined the totality of circumstances though we feel that the petitioners were not justified in making such application to the Tribunal, it is not as if such application was made with some malafide intention of depriving the Government the amounts which were secured under the bank guarantee. Therefore, we do not wish to dwell any further in this issue, which can now be given a quietus.

10. However, before we do so we observe that the Tribunal, in this case, should have been extremely careful before ordering release of the original bank guarantee. Normally, there is no question of making such orders ex-parte as was done in the present case. The minimum that was expected was that notice should have been given to the respondents. If such notice were to be given, the respondents, would have obviously pointed out the contents of our Order dated 12.06.2020 and the impact thereof. However, we now give a quietus to this matter.

11. The records and proceedings which were called for by us have been perused by us and are now directed to be returned to the Tribunal along with the copy of all the orders made in these proceedings.

12. The miscellaneous application is disposed of in the aforesaid terms. There shall be no order as to costs.

13. All concerned to act on the basis of an authenticated copy of this Order.

***SMT. M. S. JAWALKAR, J.***

***M. S. SONAK, J.***

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