



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 7TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO.100329 OF 2023 (EXCISE)

BETWEEN:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
TO EXCISE DEPARTMENT,
BENGALURU-560001.
2. THE DEPUTY COMMISSIONER OF EXCISE,
DHARWAD, DIST. DHARWAD-580001.

...APPELLANTS

(BY SRI. M.M. KHANNUR, ADDITIONAL GOVERNMENT ADVOCATE)

AND:

M/S. SHRI. RENUKA WINE HOUSE,
CTS NO.842-B, WARD NO.4,
CHANNAPETH, LATTIPETH, HUBBALLI,
REPRESENTED BY ITS PARTNER,
SUNIL BALAKRISHNANA WALVEKAR,
AGE. 60 YEARS, OCC. BUSINESS,
R/O. SHRI BALAKRISHNA KRUPA,
4TH CROSS, SHAGUN APARTMENT,
KESHWAPUR, HUBBALLI, TQ. HUBBALLI,
DIST. DHARWAD-580001.

...RESPONDENT

(BY SRI G.I. GACCHINAMATH, ADVOCATE FOR SOLE RESPONDENT)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO ALLOW THE WRIT APPEAL AND QUASH THE ORDER DATED 31ST MARCH 2021 IN W.P. NO.148214/2020, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,.





THIS WRIT APPEAL, COMING ON FOR PRELIMINARY HEARING,
THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C.M. POONACHA)

The present intra-Court appeal is filed by the State under Section 4 of the Karnataka High Court Act, 1961, challenging the order dated 31.03.2021, passed in W.P No.148214/2020, whereunder, the learned Single Judge has allowed the writ petition filed by the respondents/writ petitioners and quashed the endorsement dated 23.09.2020 issued by the Deputy Commissioner of Excise, Dharwad. Vide the said endorsement dated 23.09.2020, the writ petitioner was called upon to pay the licence fee.

2. The relevant facts are that the writ petitioner is a registered partnership firm, which was constituted vide partnership deed dated 01.04.1993 and there were three partners i.e., Suresh B. Walwekar, Sunil B. Walwekar and Ashok M. Baddi. Subsequently, vide deed dated 04.08.1997,



the firm was re-constituted on retirement of one of the partners i.e., Ashok M. Baddi and the wife of Suresh B. Walwekar i.e., Smt.Surekha has admitted into the partnership and the share of retiring partner was taken over by the new partner, who was admitted and the business of the firm was continued. The Excise Authorities contending that the change in the constitution of firm was not intimated to them, issued the endorsement dated 23.09.2020. Being aggrieved, the writ petition was filed.

3. The learned Single Judge noticing Rule 17-B of the Karnataka Excise (General Conditions of Licenses) Rules, 1967¹ and the judgment rendered by a learned Single Judge of this Court in the case of ***Shankar Wines Vs. Commissioner of Excise in Karnataka, Shanthinagar, Bangalore and another***², held that the re-constitution of firm did not tantamount to the new partner admitting more than 50% share in the partnership firm and hence allowed the writ petition and quashed the endorsement dated

¹ Hereinafter referred to as the 'Rules of 1967'

² 2017 SCC Online Kar 6942



23.09.2020 (Annexure-K). Being aggrieved, the State and its authorities have preferred the present appeal.

4. The primary contention urged by learned AGA Sri. M. M. Kannur appearing for the appellants/State is that the entire order in the case of **Shankar Wines²** has not been considered by the learned Single Judge.

5. In the present case, admittedly the re-constitution of writ petitioner firm was made, when one of the partners retired and another partner was admitted into the firm and the share of retiring partner was not more than 50%.

6. This Court, in the case of **Shankar Wines²**, has held that Rule 17-B would be applicable, if more than 50% of the share in the firm has been taken over by a new partner. The relevant portion of the ratio laid down in the case of **Shankar Wines²** is extracted here under for ready reference:

"17. In other words, so long as the existing partners do not divest themselves to 50% or more of the stake in the partnership firm which holds the licence in question, the transfer fee applicable under



Rule 17-B of the Rules will not be attracted or will not be payable. But the moment, the change is effected by one or more of the partnership deeds subsequently executed to divest the existing partners divesting of 50% or more and such 50% or more is the stake given to the incoming partner(s), it will attract the transfer fee under Rule 17-B of Rules, 1967 irrespective of their relationship with the existing partners.”

7. It is relevant to note here that a Co-ordinate Bench judgment of this Court in the case of **State of Karnataka Vs. Pallavi Bar and Restaurants³**, has considered the judgment in the case of **Shankar Wines²** and has dismissed similar appeals filed by the State.

8. In the present case, admittedly, the share of the retiring partner being less than 50%, the learned Single Judge was justified in allowing the writ petition and granting the reliefs as sought for.

9. In view of the aforementioned, the above writ appeal is dismissed as being devoid of merit.

³ 2024 (4) KCCR 3631 (DB)



10. In view of the disposal of writ appeal, pending other interim applications would not survive for consideration and are accordingly disposed of.

**Sd/-
(S G PANDIT)
JUDGE**

**Sd/-
(C.M. POONACHA)
JUDGE**

PMP
CT: UMD
List No.: 1 SI No.: 7