IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 31ST DAY OF OCTOBER 2025

®

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

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

WRIT APPEAL NO.100004 OF 2024 (EXCISE)

BETWEEN:

1. THE COMMISSIONER OF EXCISE
COMMISSIONER OF EXCISE
20 FLOOR, TTMC "A" BLOCK
BMTC COMPLEX
SHANTI NAGAR, BENGALURU-560027.

2. THE DEPUTY COMMISSIONER OF EXCISE
DEPUTY COMMISSIONER OF EXCISE
BELAGAVI, DIST: BELAGAVI - 590 001.

…APPELLANTS

(BY SRI GANGADHAR J.M., ADDITIONAL ADVOCATE GENERAL A/W SRI PRAVEEN K. UPPAR, ADDITIONAL GOVERNMENT ADVOCATE)

AND:

M/S. TANISKA LODGING AND BOARDING
A PARTNERSHIP FIRM
CL-7 LICENSEE
SURVEY NO.112/2
HVPC NO.1288
HALYALA GRAMA
ATHANI TALUKA
BELAGAVI DISTRICT - 591 304.
R/BY ITS PARTNERS 1 & 2

1. SAGAR
S/O. KALMESH KAMBALE
AGE: 32 YEARS, OCC: PARTNER

2. NAMRATHA
D/O. SUKUMAR KAMBLE
AGE: 28 YEARS, OCC: PARTNER

…RESPONDENTS

(BY SRI. MANJUNATH A. KARIGANNAVAR, ADVOCATE FOR R-1 & 2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO A) SECURE THE RECORDS IN W.P. NO.105971/2022 (EXCISE), AND AFTER EXAMINING THE SAME. B) SET ASIDE THE IMPUGNED ORDER DATED 16.06.2023 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. NO.105971/2022 (EXCISE) AND ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present appeal impugning an order dated 16.06.2023 [**impugned order**] passed by the learned Single Judge of this Court in W.P.No.105971/2022 (Excise), whereby the said petition was allowed.

2. The said writ petition was filed by the respondents [**the petitioner firm**], which is a registered partnership firm, impugning an order dated 13.09.2022 passed by appellant No.1 and an order dated 19.09.2022 passed by appellant No.2, whereby the petitioner

firm was called upon to deposit an amount of Rs.18,40,000/- for the purpose of renewal of CL-7 Licence granted to it under Rule 17B of the Karnataka Excise (General Conditions of Licences) Rules, 1967 [hereafter **'the Rules'**].

3. The learned Single Judge has set aside the orders impugned in the writ petition and has directed the appellants to refund the amount to Rs.18,40,000/- as transfer fee collected from the legal heir of the deceased partner of the petitioner firm.

<u>Prefatory facts</u>

4. The petitioner firm is engaged in carrying on business under the name and style of M/s. Taniska Lodging and Boarding located at Survey No.112/2H, VPC No.1288 of Halyala Grama, Athani Taluk, Belagavi District. The petitioner firm was constituted by two partners named, Smt. Sreemantevva W/o. Laxman Suryavanshi and her grandson Sagar S/o. Kalamesh Kamble, with their respective shares being 75% and 25%. The petitioner firm had obtained a CL-7 licence under Rule 3(7) of the Karnataka Excise (Sale of Indian Made and Foreign Liquors) Rules, 1968 [**IMFL Rules**] in Form CL-7. The said licence was also renewed for the year 2021-2022.

5. Smt. Sreemantevva Laxman Suryavanshi one of the partners of the petitioner firm, expired on 09.10.2021. However, the business of the petitioner firm was continued uninterruptedly by the surviving partner. The surviving partner applied for renewal of licence under Rule 5A of the IMFL Rules. During the course of the scrutiny of the said application, the officials of Excise Department became aware that one of the partners of the petitioner firm had expired. Mr. Kalamesh Kamble the surviving constituent partner of the petitioner firm made a representation to appellant No.2 requesting that the licence be granted only in his name.

6. In response to the said request, appellant No.2 informed Mr.Kalamesh Kamble that under Rule 17A of the Rules, the transferee must include the name of the legal heirs of the deceased partner(s) failing which he would have to pay the transfer fee under Rule 17B of the Rules.

7. Smt. Sreemantevva Laxman Suryavanshi [**the deceased partner**] of the petitioner firm was survived by four daughters. Mr. Sagar Kalamesh Kamble is the eldest son of Smt. Mahadev Laxman Suryavamshi, who is one of the daughters of the deceased partner. Ms. Namratha Sukumar is the daughter of the third daughter of deceased partner.

8. On 14.07.2022, the petitioner firm was reconstituted by inducting Ms. Namratha Sukumar, the daughter of the third daughter of the deceased partner as a partner. Thereafter, the petitioner firm filed an application along with relevant documents under Rule 17A of the Rules along with no objection of the other legal heirs of the deceased partner.

9. The application of the petitioner firm, as reconstituted for transfer of the licence, was not considered as covered under Rule 17A of the Rules.

Reasons and Conclusion

10. It is the petitioner firm’s case that the firm had not dissolved on the death of the deceased partner but, had continued after inducting her legal heir as a partner in her place. Hence, the CL-7 licence was liable to be transferred under Rule 17A and not under Rule 17B of the Rules.

11. The controversy essentially is confined to the question whether the petitioner firm’s request for transfer of licence falls under the scope of Rule 17A of the Rules as claimed by the petitioner firm or under Rule 17B of the Rules as contended by the appellants.

12. Rule 17A and 17B of the Rules, as were in force at the material time, are set out below:

> "**17. Transfer of lease not permitted**–The right of retail vend of liquor shall not be transferred by the licensee except with the previous permission of the Deputy Commissioner.
>
> **17-A. Transfer in the event of death**.–In the event of death of the licensee or the lessee, the Deputy Commissioner may on an application by the legal heirs of the deceased with the previous sanction of the Excise Commissioner, transfer the licence or the lease as the case may be, in their favour.
>
> **17-B. Transfer of licence in other cases.**– 1) Notwithstanding anything contained in Rule 2, licences issued.-
>
> (i) for Sale of Indian Liquor (other than arrack) or Foreign Liquor or both, in Form No. CL-1 (Wholesale licence) or CL-2 (retail shop licences) CL-6A (Star Hotel Licence) or CL-7 (Hotel and Boarding House Licences) or CL-9 (Refreshment room (Bar) Licence under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968; or
>
> (ii) for sale of Beer under the Karnataka Excise (Lease of Right of Retail Vend of Beer) Rules, 1976;
>
> The Deputy Commissioner may on an application by the licensee and subject to payment of transfer fee equivalent to twice the annual licence fee specified in Rule 8 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 or Rule 5 of the Karnataka Excise (Lease of Right of Retail Vend of Beer) Rules, 1976, as the case may

> be, and with the prior approval of the Excise Commissioner, transfer such licence in favour of any person named by such licence, if such person is eligible for grant of a licence under the Karnataka Excise Act, 1965 or the rules made thereunder.
>
> (2) Nothing in this rule shall apply to transfer of licence under Rule 17-A."

13. As it is apparent from the above, the transfer of licence under Rule 17A of the Rules is a transfer that is occasioned by the death of the licensee or the lessee. Rule 17A of the Rules contemplates transfer in circumstances where there is transmission of the business in the event of demise of the licensee. Rule 17B of the Rules contemplates transfer of licence in cases other than in case of transfer on account of demise of the licensee. Sub-rule (2) of Rule 17B of the Rules expressly stipulates, nothing stated in that Rule (Rule 17B) would apply to the transfer of licence under Rule 17A.

14. It is necessary to bear in mind the conceptual difference between transfer of property and transmission of property. Whereas transfer of property entails a deliberate and voluntary act, whereby the rights or interests in the property are transferred by one person to another. The transfer of property is *inter vivos*

transfer between living persons or existing entities. However, transmission of property involves an involuntary conveyance of rights or interests in the property by operation of law. This usually occurs on account of death or on succession and in some of the cases, on account of insolvency. Therefore, it is not necessary that the transmission of property be amongst living persons or existing entities.

15. When we gaze at Rule 17A and 17B of the Rules, it is apparent that Rule 17A is confined to transfer of licence in cases where there is transmission of property on account of death of the licensee. Although Rule 17A of the Rules refers to demise of the licensee, there is no cavil that the same would also include demise of a constituent partner, in case the licensee is a firm. It is trite law that the identity of a partnership firm is not separate and different from its constituent partners.

16. We may note that Rule 17A and 17B of the Rules were amended by the Notifications dated 09.02.2024 and 16.08.2024. By virtue of the Notification dated 09.02.2024, the opening words of Rule 17A of the Rules were substituted as "In the event of death of the licensee or the lessee on or after 01.01.2000" in place of "In the event of death of the licensee or the lessee". The said amendment

came into force with effect from 09.02.2024. Provisos were added under Rule 17A and Sub-rule (1) of Rule 17B of the Rules. Further, Sub-rule (3) of Rule 17B was inserted.

17. Rule 17A and 17B, as in force with effect from 17.08.2024, read as under:

> **"17. Transfer of lease not permitted**–The right of retail vend of liquor shall not be transferred by the licensee except with the previous permission of the Deputy Commissioner.
>
> **17-A. Transfer in the event of death.**–In the event of death of the licensee or the lessee on or after 01-01-2000, the Deputy Commissioner may on an application by the legal heirs of the deceased with the previous sanction of the Excise Commissioner, transfer the licence or the lease as the case may be, in their favour.
>
> Provided that, the legal heir of the deceased licensee or the guardian of the legal heir shall inform the Deputy Commissioner of Excise about the death of the licensee within forty five days from the date of death, failing which, the authority granting the licence shall have discretion to cancel the licence or impose a fine:
>
> Provided further that, a licence shall not be cancelled or no such fine shall be levied unless an opportunity of being heard is given to the legal heir of the deceased licensee or the guardian of the legal heir.
>
> **17-B. Transfer of licence in other cases.**– (1) Notwithstanding anything contained in Rule 2, licences issued.-

(i) for Sale of Indian Liquor (other than arrack) or Foreign Liquor or both, in Form No.CL-1 (Wholesale licence) or CL-2 (retail shop licences) CL-6A (Star Hotel Licence) or CL-7 (Hotel and Boarding House Licences) or CL-9 (Refreshment room (Bar) Licence under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968; or

(ii) for sale of Beer under the Karnataka Excise (Lease of Right of Retail Vend of Beer) Rules, 1976;

The Deputy Commissioner may on an application by the licensee and subject to payment of transfer fee equivalent to twice the annual licence fee specified in Rule 8 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 or Rule 5 of the Karnataka Excise (Lease of Right of Retail Vend of Beer) Rules, 1976, as the case may be, and with the prior approval of the Excise Commissioner, transfer such licence in favour of any person named by such licence, if such person is eligible for grant of a licence under the Karnataka Excise Act, 1965 or the rules made thereunder.

Provided that, in the case of Partnership firm, any change in the constitution of partnership that will result in implied effective change of control and management of the said partnership firm, i.e., if fifty percent or more of its stake in the profit sharing ratio changes hands and existing strength of group of partners loses fifty percent or more of the total stake of cent percent, then such a change in the constitution of partnership firm will attract the payment of transfer fee under Rule 17-B. This proviso is applicable for each change that has taken place in the partnership firm after 22-08-2017:

Provided further that, if changes in the partnership firm is below fifty percent, then such cases will not attract the payment of transfer fee under Rule 17-B. If the overall changes in the partnership firm after 22-08-2017 remains within fifty percent of its stake in the profit sharing ratio and existing strength of group of partners does not lose fifty percent or more of the total stake of cent percent, then such a change in the constitution of partnership firm shall not attract the payment of transfer fee under Rule 17-B.

(i) The change of fifty percent or more will be reckoned with reference to the existing Excise licence composition of firm and transferred Excise licence under Rule 17-B and at the every stage of fifty percent or more of change of stake by exit and entry of partners in the firm, it shall attract the transfer fees under Rule 17-B.

(ii) The said provisos are not applicable to the cases, in which any changes that had occurred in the existing partnership firm, prior to 22-08-2017 In such cases, the licensee is bound to pay the transfer fee irrespective of any change in percentage of stake in the partnership firm or strength of group of partners or otherwise:

Provided also that, the transfer fee under Rule 17-B is also applicable in the event of conversion of partnership firm into a proprietary concern or vice-versa, irrespective of fifty percent or more of change in share or in other words effective control of the partnership firm.

(2) Nothing in this rule shall apply to transfer of licence under Rule 17-A.

(3) Any changes including death of partner or reconstitution of partnership firm shall be brought to the notice of the Deputy Commissioner of Excise within forty five days from the date of the occurrence of death or change or re-constitution of partnership firm or conversion of partnership firm into a proprietary concern or vice-versa, failing which, the authority granting the licence

> shall have discretion to cancel the licence or impose a fine.
>
> Provided that, a licence shall not be cancelled or no such fine shall be levied unless an opportunity of being heard is given to the licensee or the legal heir/heirs of the deceased licensee or the guardian of the legal heir."

18. The first proviso to Rule 17B(1) of the Rules addresses a case where there is a transfer of licence on account of change in the constitution of a partnership firm. The said proviso recognizes that where licensee is a firm, there would be indirect transfer of the licence by effecting change in the constitution of the partnership firm. The first proviso recognizes that such a change would be implied if there is an effective change of control and management of the partnership firm. If fifty percent or more of the stake in the profit sharing ratio changes and if the constituent partners of the licensee firm loses more than fifty percent of their stake, the same would entail a transfer falling within the scope of Rule 17B of the Rules. Such cases would require payment of transfer fee under Rule 17B(1) of the Rules. The second proviso clarifies that if the change in the partnership firm is less than fifty percent, the same would not be recognized as a transfer of licence under Rule 17B of the Rules.

19. In case of demise of a partner of the firm, the same too would result in change in the constitution of the partnership firm. However, a conjoint reading of Rule 17A and 17B of the Rules clearly indicates that change in the constitution of a partnership firm resulting from death of a constituent partner would not be covered under any provisos to Sub-rule (1) of Rule 17B of the Rules. This is *ex facie* clear from plain language of Sub-rule (2) of Rule 17B of the Rules which, as noted above, expressly provides that nothing stated in Rule 17B would apply to transfer of a licence under Rule 17A of the Rules. The scheme of Rule 17A and 17B of the Rules is apparent. Whereas Rule 17A covers cases where the transfer of licence is sought on account of demise of a licensee (or in case of a death of a constituent partner where the licensee is a firm), Rule 17B of the Rules covers cases where there is transfer of licence other than on account of a death of a licensee.

20. It is also relevant to note that Rule 17A of the Rules only covers a case where transfer of the licence is sought in favour of the legal heirs of the deceased licensee. Thus, there may be cases where request for transfer of licence may be occasioned on account of death of a licensee (or a constituent partner of a licensee firm) but the transfer sought is not in favour of the legal

heirs but in favour of a third party. In case of a firm, the death of a constituent partner would inevitably occasion a change in the constitution of the firm. The surviving partners may decide to continue carrying on the business without inducting any partner in place of the deceased partner. In this case, the ratio of the holding in the firm may undergo a change. In a case where the partnership firm was constituted only by two persons, the surviving partner may carry on the business as a sole proprietor. The demise of a partner may also entail in reconstitution of the firm by induction of third parties. In either of these cases, the constitution of the licensee firm or its very nature as a firm would change. Clearly, if the change is more than fifty percent, the first and second provisos of Rule 17B(1) of the Rules would be applicable. As observed above, the import of these provisos is to recognize the effective transfer of a licence granted to a firm which results from a change in the constitution of the firm.

21. It is necessary to give a schematic interpretation to Rule 17A and 17B of the Rules. It is well-settled principle of statutory interpretation that the provisions of the statute must be read in reference to one another so as to conform to the scheme of the statute.

22. In ***Canada Sugar Refining Co. Ltd. v. R. : (1898) AC 735 (PC),*** the Court had observed as under:

> "…Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

23. In ***State of West Bengal & Others v. R.K.B.K. Limited & Another : (2015) 10 SCC 369,*** the interpretation of the West Bengal Kerosene Control Order, 1968, fell for consideration of the Court. In the aforesaid context, the Supreme Court observed as under:

> "The purpose of any Act or Rule or order, has its sanctity. While interpreting the same, the text and context have to be kept in mind. The Control Order has to be appreciated on the bedrock of schematic interpretation."

24. The rule of purposive interpretation, is equally well-settled. In ***Vivek Narayan Sharma and Others (Demonetisation Case-5 J. v. Union of India and others : ((2023) 3 SCC 1))***, the Constitution Bench of the Supreme Court had observed as under:

> "135. It is thus necessary to cull out the legislative policy from various factors like the words

> in the statute, the Preamble to the Act, the Statement of Objects and Reasons, and in a given case, even the attendant circumstances. After the legislative policy is found, then the words used in the statute must be so interpreted such that it advances the purpose of the statute and does not defeat it."

25. As noted above, in the present case, the scheme of Rule 17A and 17B of the Rules as amended, is apparent, and the said Rules are required to be interpreted, bearing in mind the legislative intent.

26. In ***State of Karnataka and another v. M/s. Pallavi Bar and Restaurants: NC:2024:KHC-D:10728-DB***, the Division Bench of this Court also examined a case where there was a change in the constitution of the firm in case where business was carried on by a Hindu Undivided Family. In such cases, demise of one of the members of the family would not result in transfer of a licence as the business would continue to be carried on by the surviving members of the family. However, the Court had clarified that if third parties were inducted in the firm, there would be an effective transfer of some interest in the business.

27. The guiding principle that determines whether a given case falls under Rule 17A of the Rules or Rule 17B of the Rules is a

change in licensee on account of demise of the licensee and transfer in favour of the legal heirs and not third parties. Thus, in order to comply with Rule 17A of the Rules, the following conditions must be met:

(i) first that the transfer must be occasioned on account of demise of the licensee or the constituent partner of a licensee firm; and

(ii) second that the transfer is to the legal heirs of the licensee or in case of a firm, the firm is reconstituted by inducting the heir(s) of the deceased partner in place of the deceased.

28. It is not material as to whether the change in the constitution of a partnership firm on account of demise or death of a partner results in a change in the interest exceeding fifty percent. Clearly in case of demise of an individual licensee, the transfer of licence in favour of the legal heir of the deceased, would be to a different individual. However, that would not be material since the transfer is to a heir of the deceased licensee. On a similar analogy, if the change in the partnership firm is on account of induction of a heir of the deceased partner, the transfer would be covered under Rule 17A of the Rules, notwithstanding that the share of the deceased in

the firm, which is transmitted to the his/her heir exceeds fifty percent.

29. In the facts of the present case, the share of the deceased partner has been transmitted to her legal heir. Thus, the case is clearly covered under Rule 17A of the Rules.

30. We may also note that although initially the surviving partner had requested that the licence be transferred in his own name, the appellant had informed him that the same would entail payment of transfer fees. Consequently, the constitution of the petitioner firm was changed by inducting a legal heir of the deceased partner to the extent of her share. Although, it is the appellant's view that transfer of the licence in the name of the sole surviving partner (Sagar Kalamesh Kamble) would require payment of transfer fee under Rule 17B of the Rules, the said view would not be sustainable if the surviving partner had claimed the share of the deceased partner as her legal heir. It is apparent from the scheme of Rule 17A and 17B of the Rules that if the share of the deceased partner devolves on the surviving partner, then the transfer of the licence would be covered under Rule 17A of the Rules.

31. In view of the above, we do not find any reason to interfere with the conclusion of the learned Single Judge.

32. The appeal is, accordingly, dismissed.

33. All pending applications stand disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

AHB/KPS