

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.566 of 2021**

Rising East Liquor Pvt. Ltd.

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

For Petitioner(s) : Mr. P.K. Ghosh, Adv.

For Respondent(s) : Mr. D. Bhattacharya, G.A.
Mr. S. Saha, Adv.

Date of hearing of

Judgment & Order : 24.01.2023

Whether fit for reporting : YES.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order(Oral)

Heard Mr. P.K. Ghosh, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharya, learned G.A. appearing for the respondents.

2. The present writ petition is filed by the petitioner seeking for the following reliefs :

- (i) Issue a Writ of Certiorari for setting aside the impugned Memorandum No.1087-88/F.XV-1(1)/CEW/SDCL/19(P1) dated 19.06.2021 passed by the Respondent No.3, whereby Excise duty has been levied on petitioner on the ENA used by the Petitioner for manufacturing hand sanitizer and the Petitioner has been directed to deposit the Excise Duty amounting to Rs.8,57,708/- (Rupees Eight Lakhs Fifty-Seven Thousand Seven Hundred Eight) only for Rs.28590.24 LPL of ENA used for making hand sanitizer;
- (ii) Stay the operation of impugned Memorandum No.1087-88/F.XV-1(1)/CEW/SDCL/19(P1) dated 19.06.2021 passed by the Respondent No.3 during the pendency of the present writ petition;

(iii) Issue any other writ/direction that this Hon'ble court pass may deem fit and proper in the facts and circumstances of this case."

3. The case of the petitioner is that he is doing business while license granted by the Excise Department of the State and in the process, he has been granted ENA permit and with the said alcohol, the petitioner made the liquid Sanitizer and the same has been supplied in the market. Though, he has not conducted any business of commercial transaction in Alcohol, the respondents have levied excise duty. Assailing the said action, the present writ petition is filed and accordingly, the counsel for the petitioner has made his submission.

4. The counsel appearing for the respondent has contended that since the petitioner has conducted the commercial transactions by selling liquid Sanitizers, accordingly, the excise duty has imposed upon the petitioner is just and proper.

Heard both sides.

5. It becomes necessary to extract the definition of Excise Duty under the Tripura Excise Act, 1987 which reads as under :

2.(g) "excise duty" and "countervailing duty" means any such excise duty or countervailing duty, as the case may be, as is mentioned in entry 51 of List-II in the Seventh Schedule to the Constitution."

6. Further, Schedule 7 List II Entry 51 of the Constitution of India speaks that :

"51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations

containing alcohol or any substance included in sub-paragraph (b) of this entry.”

7. Admittedly, it is the case of the petitioner that he was conducting manufacturing liquid Sanitizer and the same has been supplied. The said alcohol was not used for making commercial portable liquor for human consumption. In view of the above, the Excise duty which has been levied by the respondents under the presumption that the alcohol which has been supplied and used for commercial activity by way of manufacturing liquid Sanitizer cannot be treated as the alcohol which is used for manufacturing of portable alcohol for the purpose of human consumption of liquor.

8. In view of the clear distinction under Schedule 7 List II Entry 51 of the Constitution of India, this court is of the opinion that the case of the petitioner do not attract levied of any excise duty as the manufacturing of liquid Sanitizer cannot be treated as the portable alcohol for human consumption for commercial purpose.

In view of the same, the excise duty which has been levied upon the petitioner is held *ultra vires* and the same is accordingly set aside and the writ petition is allowed.

JUDGE

CHIEF JUSTICE (ACTING)