

GAHC010001942023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/94/2023

NARAYAN CHOUDHURY
S/O- SATYA NARAYAN CHOUDHURY,
R/O- KABARKHANA ROAD, TEZPUR-748001.

PROPRIETOR OF M/S SACHIN BAR AND RESTAURANT, NEHRU MAIDAN
ROAD, CHURCH FIELD ,TEZPUR-748001,
DIST- SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
EXCISE DEPARTMENT, DISPUR, GUWAHATI -06, ASSAM

2:THE COMMISSIONER

EXCISE DEPARTMENT
ASSAM
HOUSEFED COMPLEX

DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
SONITPUR
TEZPUR-748001
DIST- SONITPUR
ASSAM

4:THE SUPERINTENDENT OF EXCISE
SONITPUR
TEZPUR-748001

DIST- SONITPUR
ASSA

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

01.02.2023

Heard Mr. S.C. Biswas, learned senior counsel assisted by Ms. S. Sengupta, learned counsel for the petitioner as well as Mr. R.R. Gogoi, learned standing counsel for the Excise Department appearing for the respondent nos.1, 2 and 4 and the learned Govt. Advocate appears for the respondent no.3.

2. This writ petition has been filed by the petitioner being aggrieved by the notice issued by the Excise Department directing the petitioner to deposit the arrear renewal fee along with penalty amounting to Rs.15 lakhs (Rupees fifteen lakhs only).

3. The writ petitioner was issued a license by which he was granted an IMFL 'ON' (BAR) license being license no.2/2004/-2005 for running his restaurant-cum-bar under the name and style Sachin Bar and Restaurant in the locality of Church Field, Tezpur, District- Sonitpur. The license was granted on 06.10.2004 by the respondent no.3. The petitioner operated his restaurant-cum-bar till 02.04.2019 in compliance of all terms and conditions of license and paid the license renewal fees regularly upto the year 2018-19 within the stipulated time.

4. It is the contention of the petitioner that because of circumstances beyond his

control, he was not able to deposit license fee for the year 2019-20 within the prescribed time i.e. on or before 31.03.2019. He therefore submitted a representation before the Superintendent of Excise, Sonitpur, requesting him to permit him to make the payment within the extended period of time.

5. Thereafter the Excise authorities closed the bar and the restaurant on 02.04.2019 after a field verification whereby it was found that there was no stock of IMFL in the said bar and restaurant as the petitioner was unable to procure the required stock in the absence of a valid licence. The petitioner thereafter had fallen seriously ill requiring prolonged bed rest and medical treatment because of which there was severe restrictions in his movement. As per medical reports enclosed to his writ petition, the petitioner was declared to be medically fit only on 05.05.2022.

6. The petitioner thereafter submitted a representation before the respondent no.1, the Excise Commissioner, requesting him for permission to open the restaurant-cum-bar and to further permit him to pay the current license renewal fee for the year 2022-23 and also to grant remission/exemption for payment of license renewal fees for the years 2019-2020, 2020-2021 and 2021-22 amounting to Rs.7,50,000/-. It was submitted that because of his illness and financial constraint and also due to the fact of Covid-19 pandemic he was unable to carry on his business as he had intended to. He therefore prayed for remission/ exemption be considered sympathetically.

7. The said representation having not been considered by the Department, the petitioner approached this Court by filing WP(C) 3746/2022 seeking direction to the respondent authorities to grant remission of excise/license/ revenue fees etc. This Court vide order dated 06.06.2022 disposed of the writ petition directing the Commissioner of Excise to pass a speaking order taking note of the relevant provisions of the Assam Excise Act, 2016 and the Rules framed thereunder as well as to the health condition of the petitioner. Since no order was passed, the petitioner filed the present writ petition seeking appropriate writ

direction or order.

8. The learned counsel for the Department submits that in terms of the directions passed by this Court earlier vide the order dated 06.06.2022 passed in WP(C) 3746/2022, the representation of the petitioner was rejected by the Commissioner of Excise. Thus, by order dated 12.01.2023 the Commissioner rejected the prayer of the petitioner. He has produced a copy of the same before the Court which is kept in the Court records. He has further submitted that as per the provisions of Excise Act 2016 and Rules, the petitioner is required to make payments of renewal fees for the proposal of the renewal of the license and in the event the proposal for license is not submitted every year as per the mandate of the Act and Rules, is required penalty to be imposed and the same has been imposed on the petitioner for his failure to seek renewal of license from the year 2019-22.

9. The learned counsel for the parties have been heard. Pleadings on record have been perused. Provision of the Act of 2018 and the Rules has also been perused.

10. It is seen that under section 130, it is provided that the licensees who fails to deposit the license renewal proposal as per Rule 129(1)(a) and Rule 129(2)(a) and sanction for renewal in whose favour has been delayed due to reasons attributable to the licensee and if for such reasons the licensee fails to deposit the license renewal fee as provided under Rule 129(1)(b) and Rule 129(2)(f), the licence shall cease to have effect with effect from the first day of April to the date of endorsement of renewal by the Collector provided that such defaulter has to pay 50% of the licence fee as penalty before renewal of the license. Section 130 is extracted below:

“The licensees who fail to deposit the license renewal proposal as per Rule 129(1)(a) and Rule 129(2)(a) and sanction for renewal in whose favour has been delayed due to reasons attributable to the licensee and if for such reasons the licensee fail to deposit the licence renewal fee as provided in Rule 129(1)(b) and Rule 129(2)(f), the licence shall cease to have effect with effect from the first day of April to the date of endorsement of renewal by the Collector provided that such defaulter has to pay 50% of the licence fee as penalty before renewal of the licence.”

11. Perusal of the relevant provisions of section 130, it is seen that the section prescribes that where delay is attributable to the licensee and if for some reasons the licensee has failed to deposit the licence renewal fees than the defaulter/licensee has to pay 50% of the license fees as penalty before renewal of license. Perusal of the order dated 12.01.2023 issued by the Additional Commissioner of Excise, Assam in-charge, it is seen that the application/ representation presented by the petitioner has been rejected on the ground that under the Assam Excise Rules, 2016 all licensees have to deposit annual renewal fee every year and on failure to deposit the same will have to pay 50% of the license fees as penalty prior to the renewal of the licence.

12. The term "*attributable*" is not defined under the Assam Excise Act 2000 and Assam Excise Rules 2016. As such the definition will have to be understood as per the common dictionary meaning. In Chamber's 20th Century Dictionary, 1983 New Edition defines *attribute* to mean "*ascribe, assign or consider as belonging*", "*that which is inherent in or inseparable from anything.*" The Apex Court in *India Leather Corporation Pvt. Ltd. reported in 1997 10 SCC 115* in the context of the Income Tax Act, 1961 held that "for a result to be attributable to anything it must be wholly, or in material part, caused by that thing." A casual connection is necessary.

13. The mandate of section 130 prescribes that such penalty is imposed where the delay of renewal is for reasons attributable to the licensee and for which reasons that the licensee has failed to deposit the license renewal fees within the prescribed period. Under such circumstances, there has to be an application of mind by the concerned authorities to arrive at a finding that the delay for seeking renewal of licence and for depositing of license renewal fees has to be for reasons attributable to the licensee. From the order dated 12.01.2023, it is seen that such a finding has not been arrived at by the Commissioner of Excise while rejecting the application/ representation preferred by the petitioner.

14. Accordingly, this Court is of the considered view that requirement under Rule 130 of the Assam Excise Rules, 2016 has not been followed as mandated by the competent authority namely, the Commissioner of Excise while passing the order dated 12.01.2023.

15. As such, this Court is of the view that the matter be remanded to the Commissioner of Excise to re-decide on the application/representation filed by the petitioner and thereupon pass necessary orders in terms of the said provisions and the Rules.

16. While doing so, the Commissioner will also actively take into consideration the sufferings and the hardships faced by the citizens of the country because of Covid-19 pandemic and the effect it had on the people and their livelihoods. Although this Court had taken judicial notice of the order dated 12.01.2023 passed by the Commissioner of Excise which has been placed before the Court by the learned standing counsel, it is deemed appropriate not to interfere with it at this stage but to direct the Commissioner of Excise to re-consider the representation de-nove and pass appropriate orders thereon as required under section 130.

17. In view of the directions above, the order dated 12.01.2023 shall not be given effect to. The direction should be complied by the Commissioner of Excise within a period of 4(four) weeks from the date of receipt of the certified copy of the order.

18. In view of the aforesaid directions, the writ petition is allowed to the extent indicated above and is accordingly disposed of.

19. No order as to cost.

JUDGE.

Comparing Assistant