

GAHC010027852023



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

Case No. : WP(C)/764/2023

B N DEY AND CO
REGISTERED OFFICE AT NCB ROAD PANBAZAR GUWAHATI 1 P.O.
PANBAZAR P.S PANBAZAR DIST. KAMRUP (M) ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY EXCISE DEPTT. DISPUR
GUWAHATI 6 ASSAM

2:THE DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI ASSAM

3:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX DISPUR GUWAHATI 6

4:THE SUPERINTENDENT OF EXCISE
KAMRUP (M)
GUWAHATI ASSA

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, EXCISE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

22.02.2023

Heard Shri H. Das, learned counsel for the petitioner. Also heard Shri R.R. Gogoi, learned Standing Counsel, Excise Department whereas Shri D.K. Sharma, learned Addl. Senior Government Advocate appears for the respondent no. 2.

Considering the nature of the dispute and the instructions placed before this Court by Shri Gogoi, the learned Standing Counsel, this writ petition is taken up for disposal at the motion stage itself.

However, before going to the issue involved, the basic facts may be stated in the following manner.

The petitioner is a licensee of an IMFL "OFF" Shop at Panbazar and claims to be the oldest IMFL Shop in Guwahati. However, due to the demise of the partners of the petitioners firm, new partners had to be inducted for which necessary application dated 12.09.2018 was submitted to the Deputy Commissioner, Kamrup. However, instead of considering the said application, the Superintendent of Excise, Kamrup had issued a Show Cause questioning the petitioner regarding inclusion of new partners. It has also been alleged that there is a violation of Rule 300 of Assam Excise Rule, 2016.

On receipt of such notice, the petitioner gave a written clarification on 03.06.2019 by clarifying that there was absolutely no violation of any Rules and the requirement to induct new partners was only because of demise of the earlier partner. It is the case of the petitioner that in spite of such clarification,

the matter did not progress.

Under such circumstances, the petitioner had earlier approached this Court by filing WP(C)/5807/2019. This Court vide order dated 26.08.2019 had directed the respondent no. 4 to consider the application of the petitioner. Since the direction of this Court was yet to be complied with, the petitioner had to file a Contempt Case being Cont.Cas(C)/ 220/2020 in which this Court had requested the presence of the respondent no.4. The grievance of the petitioner is that in spite of all the clarification, vide the impugned order dated 5/12/2022, the representation of the petitioner which was pending since 2018 has been rejected.

Shri Das, the learned counsel for the petitioner submits that such rejection has been done without any application of mind and on wholly extraneous and irrelevant consideration.

Shri R.R. Gogoi, learned Standing Counsel, Excise Department however submits that the rejection was done on a mistaken assumption of facts as there was a Title Suit pending between the existing partners. This Court has been apprised that the said Title Suit has however been withdrawn and therefore as on today there is no litigation amongst the partners.

Shri Gogoi, the learned Standing Counsel submits that in view of the facts that there is no litigation pending among the partners, the present application for induction of new partner is now able to be considered in accordance with law.

In view of the aforesaid development, this Court is of the opinion that no practical purpose would be served by keeping this writ petition pending and the same is accordingly disposed of directing the authorities in the Excise

Department to consider and pass final orders on the representation dated 12.09.2018 or any other fresh representation including the one dated 09.01.2023 and pass speaking order thereon. The same be done expeditiously and preferably within a period of 2 (two) months from today.

Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant