

GAHC010142972021



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

Case No. : WP(C)/4575/2021

M/S BARAK WAREHOUSE PVT. LTD. AND ANR.
HAVING ITS OFFICE AT LACHMIDHAR ROAD, TARAPUR, SILCHAR, 788003,
REPRESENTED BY ITS DIRECTOR, SHRI ARINDAM HORE

2: SHRI ARINDAM HORE
S/O SHRI BABUL HORE

RESIDENT OF LACHMIDHAR ROAD
TARAPUR
SILCHAR
78800

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EXCISE DEPARTMENT, DISPUR, GUWAHATI 06, ASSAM

2:THE COMMISSIONER OF EXCISE
ASSAM HOUSEFED COMPLEX
DISPUR GUWAHATI 06

3:THE SUPERINTENDENT OF EXCISE

CACHAR
ASSAM
78500

Advocate for the Petitioner : MR. N J KHATANAR

Advocate for the Respondent : SC, EXCISE DEPTT.

Linked Case : WP(C)/6266/2018

M/S. KDC BONDED WAREHOUSE PVT. LTD. AND ANR.
HAVING ITS OFFICE AT K.C. ROAD
CHATRIBARI
GUWAHATI
DIST.- KAMRUP(M)
PIN- 781008
REP. BY ITS DIRECTOR
SHRI ROSHAN CHAND.

2: ROSHAN CHAND
SON OF DANI CHAND
RESIDENT OF MAHENDRA SINGH BUILDING
K.C. ROAD
CHATRIBARI
GUWAHATI- 781008.
VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EXCISE DEPTT.
DISPUR
GUWAHATI-6
ASSAM.

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-6.
3:THE SUPERINTENDENT OF EXCISE

KAMRUP
ASSAM.

Advocate for : MR. N J KHATANIAR
Advocate for : MR. R R Gogoi
SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WP(C)/6256/2018

M/S. RADIANT MANUFACTURES PVT. LTD. AND ANR.

HAVING ITS OFFICE AT KHATKHATI
KARBI ANGLONG
ASSAM
PIN- 782480
REP. BY ITS DIRECTOR
SRI ROSHAN CHAND

2: ROSHAN CHAND
S/O- DANI CHAND
R/O- MAHENDRA SINGH BUILDING K C ROAD
CHATRIBARI
GHY- 08
VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
EXCISE DEPTT
DISPUR
GHY- 6
ASSAM

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI- 6
3:THE SUPERINTENDENT OF EXCISE
KARBI ANGLONG
ASSAM

Advocate for : MR. N J KHATANIAR
Advocate for : MR. R R Gogoi
SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WP(C)/6347/2018

M/S. ABHIJIT INTERNATIONAL AND ANR.
A PARTNERSHIP FIRM HAVING ITS OFFICE AT ABC HOUSE
1ST FLOOR
T.R. PHOOKAN ROAD
GUWAHATI - 781001

REP. BY ITS AUTHORIZED REPRESENTATIVE SHRI BIJAY KUMAR MODI.

2: SHRI BIJAY KUMAR MODI
S/O LT. SUGANDH CHAND MODI
R/O HOUSE NO. 17
BISHNU PATH
R.G. BARUAH ROAD

GUWAHATI- 781024
VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

EXCISE DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM

2:THE COMMISSIONER OF EXCISE

ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI -6.

3:THE SUPERINTENDENT OF EXCISE

KAMRUP
ASSAM

Advocate for : MR. N J KHATANIAR
Advocate for : MR. R R Gogoi
SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WP(C)/653/2019

M/S. S.B.BONDED WAREHOUSE PVT. LTD.
A PRIVATE LIMITED COMPANY
REGISTERED UNDER THE COMPANIES ACT
1956 HAVING ITS OFFICE AT MEHERPUR
SILCHAR
IN THE DISTRICT OF CACHAR
ASSAM AND IS REPRESENTED BY ITS MANAGING DIRECTOR
SHRI DEBAJYOTI BHUYAN
AGED ABOUT 55 YEARS.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EXCISE DEPTT.
DISPUR
GUWAHATI-6
ASSAM.

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-6
ASSAM.

3:THE SUPERINTENDENT OF EXCISE
CACHAR
SILCHAR
ASSAM.

Advocate for : MR. P BORA
Advocate for : MR. R R Gogoi
SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WP(C)/8463/2018

R.S.BONDED WAREHOUSE PVT. LTD.
A PRIVATE LIMITED COMPANY
REGISTERED UNDER THE COMPANIES ACT
1956 HAVING ITS OFFICE AT G.F. ROAD
GOLAGHAT IN THE DIST. OF GOLAGHAT
ASSAM AND IS REP. BY ITS MANAGING DIRECTOR

SHRI ROMESH SAIKIA.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI -06
ASSAM.

2:THE COMMISSIONER OF EXCISE

ASSAM HOUSEFED COMPLEX

DISPUR

GUWAHATI -6

ASSAM

3:THE SUPERINTENDENT OF EXCISE

GOLAGHAT

ASSAM

Advocate for : MR. P BORA

Advocate for : MR. R R Gogoi

SC

EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WP(C)/1000/2019

M/S. NANAK SINGH SUJAN SINGH SADANA PVT. LTD. AND ANR.

HAVING ITS REGISTERED OFFICE AT RAJ SINGH PALACE

S.S. ROAD

FANCY BAZAR

GUWAHATI

DIST.- KAMRUP(M)

PIN- 781001

REP. BY ITS DIRECTOR

SHRI BHANU PRATAP SINGH SADANA.

2: BHANU PRATAP SINGH SADANA

S/O. SHRI BHUINDER SIGNH SADANA

R/O.- FANCY BAZAR

S.S. ROAD

GUWAHATI-781001

DIST.- KAMRUP(M)

ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

EXCISE DEPTT.

DISPUR

GUWAHATI-6

ASSAM.

2:THE COMMISSIONER OF EXCISE

ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-6.
3:THE SUPERINTENDENT OF EXCISE
KAMRUP
ASSAM.

Advocate for : MR. N J KHATANIAR
Advocate for : MR. R R Gogoi
SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WP(C)/6141/2018

M/S. HILL VIEW BONDED WAREHOUSE PVT. LTD. AND ANR.
HAVING ITS OFFICE AT A T ROAD
KALIPUR
GUWAHATI
DIST- KAMRUP(M)
PIN- 781009
REP. BY ITS DIRECTOR
SRI PRANAB HAZARIKA

2: PRANAB HAZARIKA
S/O- LATE ATUL KRISHNA HAZARIKA
R/O- JUGAL BAZAR
GANESHGURI CHARIALI
DISPUR
GUWAHATI- 781006
VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
EXCISE DEPTT
DISPUR
GUWAHATI- 6
ASSAM

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

KAMRUP
ASSAM

Advocate for : MR. N J KHATANIAR
Advocate for : SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WP(C)/8170/2017

M/S. SURYA KIRAN TRADECOM PVT. LTD. and ANR.
HAVING ITS REGISTERED OFFICE AT L.G. PLAZA
OPP NALIAPUL BAZAR
A.T. ROAD
DIBRUGARH-786001
ASSAM
REP. BY ITS DIRECTOR ABHIJIT SAIKIA

2: ABHIJIT SAIKIA
S/O LATE ANANDA CHANDRA SAIKIA
R/O ANANDA VILLA
GELLPUKHURI ROAD
TINSUKIA
DIST. TINSUKIA
ASSAM
VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
EXCISE DEPTT.
DISPUR
GUWAHATI-6
ASSAM

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-6
3:THE SUPERINTENDENT OF EXCISE
DIBRUGARH
ASSAM

Advocate for : MR. N J KHATANIAR
Advocate for : MR. R R Gogoi
SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM and 2 ORS.

Linked Case : WP(C)/1250/2019

BITOPAN CHALIHA WHOLESALE WAREHOUSE
A PROPRIETORSHIP CONCERN
HAVING ITS SHOP/OFFICE AT SANIBARI ROAD
DIBRUGARH
ASSAM AND IS REP. BY ITS PROPRIETOR- SHRI BITOPAN CHALIHA
S/O- LT HARA PRASAD CHALIHA
R/O- SOUTH AMOLAPATTY
MOHANGHAT
DIBRUGARH
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EXCISE DEPTT.
DISPUR
GHY-6
ASSAM

2:THE COMM. OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-6
ASSAM
3:THE SUPERINTENDENT OF EXCISE
DIBRUGARH
ASSAM

Advocate for : MR. P BORA
Advocate for : MR. R R Gogoi
SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WP(C)/6268/2018

M/S. THE EASTERN ENTERPRISE AND ANR.
A PARTNERSHIP FIRM HAVING ITS OFFICE AT M L NEHRU ROAD
PANBAZAR

GUWAHATI- 781001
REP. BY ITS PARTNER
SRI PRANAB KUMAR BANERJEE

2: PRANAB KUMAR BANERJEE
S/O- LATE DURGA CHARAN BANERJEE
R/O- M L NEHRU ROAD
PANBAZAR
GUWAHATI- 781001
VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
EXCISE DEPTT
DISPUR
GUWAHATI- 6
ASSAM

2:THE COMMISSIONER OF EXCISE
ASSAM

HOUSEFED COMPLEX
DISPUR

GUWAHATI- 06

3:THE SUPERINTENDENT OF EXCISE
KAMRUP
ASSAM

Advocate for : MR. N J KHATANAR

Advocate for : MR. R R Gogoi

SC

EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 2 ORS

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 09.05.2023

Heard Mr.P. Bora, the learned Senior Counsel assisted by Mr. H.K. Sarma,
the learned counsel appearing on behalf of the petitioners in W.P.(C)
No.8463/2018, W.P.(C) No.653/2019 & W.P.(C) No.1250/2019 and Mr. N.J

Khataniar, the learned counsel appearing on behalf of the petitioners in W.P.(C) No. 1000/2019, W.P.(C) No. 6347/2018, W.P.(C) No.6347/2018, W.P.(C) No.6268/2018, W.P.(C) No.6268/2018, W.P.(C) No.6266/2018, W.P.(C) No.6256/2018 & W.P.(C) No.6141/2018. I have also heard Mr. K.P. Pathak, the learned Standing Counsel appearing on behalf of the Excise Department.

2. The primary issue involved in the present batch of writ petitions is as to whether the respondent authorities could have imposed upon the petitioners the establishment charges in terms with Clause 9 of the order of the Governor dated 29/8/2016.

3. The facts relevant in the instant batch of the writ petitions are that the petitioners herein prior to 1/9/2016 were license bonded warehouses. However, prior to coming into effect of the Assam Excise Act, 2016 (for short the 'Act of 2016') w.e.f. 1/9/2016, an issue arose in view of the change in the status of the bonded warehouse as it was defined in terms with the Act of 2016.

4. A perusal of the Assam Excise Rules, 2016 (for short the 'the Rules of 2016') framed under the Act of 2016 shows that the term "bonded warehouse" has been defined in Rule 1(A) (xvi) to mean the premises or any part of the premises within a manufactory and/or within a canteen store depot warehouse approved and licensed for deposit or storage of spirits on which duty

has not been paid. On the other hand, Rule 1(A) (xvii) defines 'wholesale warehouses' to mean those premises or any part of the premises approved and licensed for deposit or storage of spirits on which duty/levy has been paid and from where India made foreign liquor may be supplied by wholesale. In view of the change of the definition of 'bonded warehouses' in terms with the Rules of 2016 which now requires to be within the manufactory, the petitioners herein in the present batch of writ petitions in view of the definition could not retain the character of a 'bonded warehouses' and came within the ambit of the 'wholesale warehouses'. With the change in the character of the petitioners' business from 'bonded warehouses' to 'wholesale warehouses' an important issue arose inasmuch as in 'bonded warehouses', the Indian Made Foreign Liquor(IMFL) were stored or deposited without payment of the duty whereas in 'wholesale warehouses' 'the deposit or storage of IMFL had to be with payment of duty/levy. In view of the changes which were going to be effected w.e.f. 1/9/2016, the Governor of Assam passed an order on 29/8/2016. A perusal of the said order reflects that a joint team was constituted as per the said Order who shall take stock of all such transitional taxable under-bond stock of liquor/spirit in the erstwhile bonded warehouses (now wholesale warehouse licensees) as on the date preceding the date of coming into effect of the Act of 2016 and the Rules of 2016 including the stock in-transit, the value of such

stock as per the Books of Accounts and were required to calculate and record the Govt. levies involved on such stock, including the ad-valorem levy and VAT, as per the Rules of 2016 and the Assam VAT Act of 2003 as amended. Clause 3(a) and 3(b) of the said Order being relevant are reproduced herein under :

“3. (a) On receipt of such report from the concerned Head of the Joint Team, the Excise Commissioner shall pass an order to the effect that the entire amount of ad-valorem levy involved on the transitional taxable under-bond stock of liquor be deposited by the licensees of the erstwhile bonded warehouses (now Wholesale Warehouse licensees) at the rate applicable under the new Assam Excise Rules, 2016 within a period of three (3) months from the date of coming into force of such Rules.

(b) On receipt of such report, the Commissioner of Taxes shall also pass an order to the effect that the entire amount of VAT involved on the transitional taxable under-bond stock of liquor be deposited by the licensees of the erstwhile bonded warehouses (now Wholesale Warehouse licensees) at the rate applicable under the new Assam VAT Act, 2003, as amended.”

5. It reveals from the said clauses that on the basis of the report to be submitted from the Head of the Joint Team, the Excise Commissioner shall pass an order to the effect that the entire amount of ad-valorem levy involved on the transitional taxable under-bond stock of liquor be deposited by the licensees of the erstwhile bonded warehouses (now wholesale warehouse licensees) at the rate applicable under the Act of 2016 within a period of three months from the date of coming of the Rules of 2016. Further to that, in terms with Sub-Clause (b) of Clause 3, on the basis of the said report by the Head of the Joint Team, the Commissioner of Taxes shall also carry out a similar exercise.

6. Clause 4 of the said order dated 29/8/2016 further stipulates that the

Superintendent of Excise of the concerned districts shall submit daily report to the Excise Commissioner and the Commissioner of Taxes along with the copy to the concerned Superintendent of Taxes showing warehouse-wise amount of arrear ad-valorem levy and VAT realised on that day. In terms with Clause 5, the entire amount of ad-valorem levy and VAT on the transitional taxable under-bond stock of liquor were to be realised within three months from the date of the notification of the Rules of 2016. It was further mentioned that if any erstwhile bonded warehouse (now wholesale warehouses licensee) failed to deposit the entire amount of arrear ad-valorem levy and VAT within that period, the warehouse licensee shall be liable to be cancelled and the stock therein shall be liable to be confiscated to the State.

7. Clause 6 of the said order dated 29/8/2016 is also pertinent to the instant issue inasmuch as the said Clause relates to the presence of unfit or dead stock found in the erstwhile bonded warehouse (now wholesale warehouse). The said Clause being relevant is reproduced hereinunder :

“6. In case of presence of unfit or dead stock found in the erstwhile Bonded Warehouses(now Wholesale Warehouse licensees), the same shall be dealt with as per established procedure, on specific report from the Head of the Joint Team to the Excise Commissioner and Commissioner of Taxes on case to case basis within this three months period.”

8. In terms with the above quoted Clause, it would therefore be seen that as regards the unfit or dead stock, the same has to be dealt with as per the

established procedure on specific report from the Head of the Joint Team to the Excise Commissioner and Commissioner of Taxes on case to case basis within the three months period. While Clause 6 related to unfit or dead stock, Clause 7 related to godown or storage wastage allowance which were directed to be allowed as per the established procedure on specific report from the Head of the Joint Team to the Excise Commissioner and the Commissioner of Taxes on warehouse to warehouse basis within the three months period.

9. Clause 9 of the order dated 29/8/2016 is the crux of the entire litigation.

Clause 9 of the said order being relevant is reproduced hereinunder :

“9. The Excise establishment posted at the erstwhile bonded warehouse (now wholesale warehouse licensees) shall not be withdrawn till the entire amount of arrear ad-valorem levy and VAT on the transitional taxable under-bond stock of liquor including the stock in transit is deposited and the licensee concerned shall be liable to reimburse to the Government, the salary etc of such excise establishment till they are withdrawn by the Government on a no-dues certificate issued by the concerned Superintendent of Excise or Deputy Superintendent of Excise and the concerned Superintendent of Taxes.”

10. A perusal of the Clause 9 shows that the Excise establishment posted at the erstwhile bonded warehouse (now wholesale warehouse licensees) shall not be withdrawn till the entire amount of arrear ad-valorem levy and VAT on transitional taxable under-bond stock of liquor including the stock in transit is deposited and the licensee concerned shall be liable to reimburse to the Government, the salary etc of such excise establishment till they are withdrawn by the Government on a no-dues certificate issued by the concerned

Superintendent of Excise or Deputy Superintendent of Excise and the concerned Superintendent of Taxes. It is in view of Clause 9, that the petitioners herein in the present batch of writ petitions have been directed to pay the establishment charge which have been assailed in the instant writ petitions.

11. It is the specific case of the petitioners that the petitioners have paid the ad-valorem levy as well as the tax VAT for the saleable goods which were fit for human consumption. It is the further case of the petitioners that as regards those unfit or dead stocks, the Respondent Authorities were required to take up an exercise in terms with Clause 6 of the Order dated 29/8/2016 and there are reports of the chemical analyst to the effect that those stocks were not fit for human consumption and as such the question of imposition of any levy on account of ad-valorem excise duty or for tax or for VAT did not arise. It is therefore the case of the petitioners that upon payment of the total excise duty as well as the VAT on the saleable goods, Clause 5 of the order dated 29/8/2016 stood complied with and as such the payment of establishment charges in respect to those excise establishment posted in the wholesale warehouses of the petitioners did not arise.

12. The learned Senior Counsel, Mr. Pran Bora appearing on behalf of the petitioners in W.P.(C) No.8463/2018, W.P.(C) No.653/2019 & W.P.(C)

No.1250/2019 further submitted that pursuant to the report so submitted by the Head of the Joint Team there were further sub-committees formed to ascertain the amount payable on saleable goods and those which were unfit for human consumption. It is the submission of the learned Senior Counsel that in pursuance to the said verification being carried out by the sub committees, the petitioners on the other hand were entitled for refund of certain amounts from the Excise Department as well from the Tax Department and as such the question of imposition of establishment charges in terms with Clause 9 cannot arise in respect to such petitioners.

13. This Court also finds it relevant to take note of the submission of Mr. N.J. Khataniar, the learned counsel appearing for the petitioners in the other writ petitions wherein he submitted that on one hand it was the mandate in terms with the order 29/8/2016 to complete the entire exercise within a period of three months but till date the respondent-Excise Department have not taken any action pursuant to the report submitted by the chemical analyst that certain goods were not fit for human consumption. He therefore submits that the delay in bringing to end the proceedings was due to the fault of the Excise Department and for that reason the petitioners could not be made liable for payment of the establishment charges. He further submitted that there is a prayer in all the writ petitions for a direction to the Excise Department so that

they act on the basis of the chemical analyst' report and pass appropriate orders for destroying the unfit and dead stocks.

14. On the other hand, Mr. K.P. Pathak, the learned Standing Counsel for the Excise Department submitted that a perusal of Clause 6 of the order dated 29/8/2016 only stipulated that the dead or unfit stocks were to be dealt with as per the established procedure, on the specific report from the Head of the Joint Team to the Excise Commissioner or the Commissioner of Taxes on case to case basis within three months. He therefore, submits that there is no mention therein as regards the exemption to be granted in respect to unfit or dead stocks as regards payment of ad-valorem excise duty as well as VAT. He further submitted that a perusal of Clause 9 categorically would show that till the arrear ad-valorem or the VAT on the transitional taxable under-bond stock of liquor including the stock in transit is deposited, the liability of the wholesale warehouse licensees i.e. the petitioners herein would continue towards the payment of the establishment costs till clearing of the said liability on account of ad-valorem levy and VAT.

15. During the course of the hearing, the learned counsel for the Excise Department had produced an instruction dated 29th of April, 2023 of the Additional Commissioner of Excise wherein the details of payment of ad-valorem

levy and VAT by the petitioners have been duly mentioned pursuant to the joint verification and the orders passed by the Authorities. Taking into account the relevance of the said details, this Court deems it appropriate to reproduce the details as submitted in respect to each of the petitioners:-

Case No. Name	Date of Joint Verification	Amount directed to be paid(Advalorem levy + VAT)	Amount paid by the Warehouse	Date of Full and Final payment.
W.P.(C) No.4575/2021(M/s Barak Warehouse)	07.09.2016	Rs. 102651481.00 (Levy) Rs.62889206.00(VAT)	Rs. 35361734.00(Levy) Rs.17918625.00(VAT)	
W.P.(C) No.8170/2017 (M/s Surya Kiran Tradecom Pvt. Ltd.)	05.09.2016	Rs. 32479787.00 (Levy) Rs.19571736.00(VAT)	Rs. 27134930.00(Levy) Rs.15678668.00(VAT)	
W.P.(C) No.6141/2018 (M/s Hill View Bonded Warehouse)	05.09.2016	Rs.24143444.80(Levy) Rs.15911922.60(VAT)	Rs.23108049.00(Levy) Rs.15331298.00(VAT)	
W.P.(C) No.6256/2018 (M/s Radiant Manufacturers Pvt. Ltd.)	06.09.2016	Rs.66594821.00(Levy) Rs.44598142.00(VAT)	Rs.49860159.00(Levy) Rs.32019285.00(VAT)	
W.P.(C) No.6266/2018 (M/s KDC Bonded Warehouse)	06.09.2016	Rs.49379103.55(Levy) Rs.40596579.02(VAT)	Rs.44115664.00(Levy) Rs.37241345.00(VAT)	
W.P.(C) No.6268/2018 (M/s Eastern Enterprise & Anr.)	26.09.2016	Rs.46609615.19(Levy) Rs.34168708.81(VAT)	Rs.40099688.00(Levy) Rs.28507930.00(VAT)	
W.P.(C) No.6347/2018 (M/s Abhijit International)	03.09.2016	Rs.48610019.12(Levy) Rs.33312981.82(VAT)	Rs.43965451.00(Levy) Rs.30403096.00(VAT)	
W.P.(C) No.8463/2018 (M/s R.S. Bonded Warehouse)	02.09.2016	Rs.76463639.00(Levy) Rs.49468031.00(VAT)	Rs.46923095.00(Levy) Rs.10746357.00(VAT)	
W.P.(C) No.653/2019 (M/s S.B. Bonded Warehouse Pvt.Ltd)	07.09.2016	Rs.53429819.00(Levy) Rs.32489549.00(VAT)	Rs.10773586.00(Levy) Rs.1300000.00(VAT)	

W.P.(C) No.1000/2019 (M/s Nanak Singh Sujan Singh)	08.09.2016	Rs.23165638.01(Levy)	Rs.21051878.00(Levy)	
		Rs.17573607.64(VAT)	Rs.15801534.00(VAT)	
W.P.(C) No.1250/2019 (M/s Bitopan Chaliha Wholesale Warehouse)	02.09.2016	Rs.18013490.00(Levy)	Rs.7261933.00(Levy)	
		Rs.11283851.00(VAT)	Rs.5466976.00(VAT)	

16. It is therefore the case of the learned Standing Counsel for the Excise Department that as the petitioners have not cleared the entire dues in terms with the orders being passed by the Excise Commissioner, the petitioners continue to be liable to payment of the establishment costs till they clear the dues in terms with the mandate of Clause 9 of the order dated 29/8/2016. The learned Standing Counsel for the Excise Department further submitted that neither the orders passed by the Excise Commissioner regarding payment of the ad-valorem levy have been challenged nor Clause 9 of the order dated 29/8/2016 has been put to challenge. Under such circumstances, till the levy remains unpaid, the petitioners are bound to pay and the Respondents –Excise Department are justified to demand on account of establishment charges from the petitioners.

17. Before proceeding further, this Court also finds it relevant to take note of that there are additional affidavit –in-reply filed today by the various writ petitioners. From the said affidavit-in-reply, it transpires that the petitioners have claimed that they had paid the dues on the goods which were fit for

human consumption and as regards the dead stock, even the Commissioner of Excise had also written it to the Government for the purpose of waiving of the ad-valorem levy and VAT involved in non-consumable stocks. However, it appears that the Under Secretary to the Government of Assam, Excise Department after making a reference to the observations of the Finance/Taxation Department of the Government of Assam had issued a communication dated 27th of October,2020 stating inter alia that the VAT involved in the non consumable stock amounting to Rs. 18,21,71,547.06 being a substantial amount, the same cannot be granted exemption as it would put a considerable strain on the State financially. However, there appears to be no order passed by the Government in respect to the ad-valorem levy of excise in pursuance to the communication issued by the Commissioner of Excise to the Additional Chief Secretary to the Govt. of Assam, Excise Department dated 29th of August,2019.

18. I have heard the learned counsel for the parties and have also perused the materials on record.

19. From a perusal of Clause 9 of the office order dated 29/8/2016, it is clear and unambiguous to the effect that till the ad-valorem levy and the VAT on the transitional taxable un-bond stock of liquor including the stock in transit is

deposited, the petitioners who are now carrying their business as wholesale warehouses would continue to be liable to pay the excise establishment charges. The fact that in pursuance to the report submitted by the Head of the Joint Team, the Excise Commissioner had passed orders in terms with Clause 3 is not in dispute, such orders have also not been put to challenge. The details so given by the learned Standing Counsel as detailed out in the previous segments of the instant judgment in the tabulated form also makes it clear that insofar as the petitioners are concerned, there is a liability to pay the ad-valorem excise duty as well as the VAT. The fact that the Government of Assam in the Excise Department have not taken any decision on the dead or unfit stock can also be seen from the affidavit-in-reply filed by the petitioners meaning thereby as on today, the petitioners continue to be liable to pay the said amounts as directed in terms with Clause 3(a) by the Excise Commissioner. The fact that the Government of Assam in the Finance and Taxation Department is also not willing to forgo the VAT on the unfit or dead stock can also be clearly seen from the order dated 27/10/2020 issued by the Under Secretary to the Government of Assam, Excise Department which is also not put to challenge by the petitioners.

20. Therefore, from the above one aspect of the matter is clear that the demand towards ad-valorem excise duty as well as the VAT have not been paid

as demanded by the authorities concerned in exercise of the powers under Clause 3 of the Order dated 29/8/2016. Under such circumstances, as Clause 9 of the office order dated 29/8/2016 is not the subject matter of challenge, the petitioners therefore, would be liable to pay the establishment charges either till payment of the amount so demanded by the authorities concerned in exercise of the power under Clause 3 or such demands are set aside/exempted in accordance with law.

21. The next issue arises in view of a prayers being made in all the writ petitions for a writ in the nature of mandamus directing the respondent authorities for passing appropriate orders by the respondent authorities by destroying the unfit/the dead stock. It is the case of the petitioners that this aspect of the matters ought to have been done so within a period of 3 months but till date even after a passage of more than 6 years nothing has been done and thereby the demand so raised against the petitioners continues to remain pending.

22. Mr. Pran Bora, the learned Senior Counsel as well as Mr. N.J. Khataniar, the learned counsel have vehemently argued that the delay in taking a decision in respect to the dead and unfit stocks had made the imposition of establishment charge for no fault of the petitioners arbitrary and unreasonable

and thereby violative of the mandate of Article 14 of the Constitution. It is therefore their submission that this aspect of the matter needs to be decided by the respondent authorities at the earliest so that the petitioners herein are not put to further harassment on account of their unreasonable demands.

23. Upon perusal of the materials on record, it does not transpire that the respondent authorities have taken any action as regards the dead/the unfit stocks which have been mentioned in the reports submitted by the Head of the Joint Team in terms with Clause 6 of the order dated 29/8/2016. This aspect needs to be finally decided by the respondent authorities at the earliest so that the entire exercise which was carried out in terms with the order dated 29/8/2016 could be brought to a logical conclusion. Therefore, this Court directs the respondent authorities to take a definitive decision on the claims of the petitioners in respect to the dead/unfit stocks within a period of 2 months from the date a certified copy of the instant judgment is served upon the Commissioner of Excise. However, it is made clear that the petitioners de hors the above exercise to be carried out as directed in the instant paragraph shall continue to remain liable to pay the establishment charges till such time the excise duty and VAT payable is not settled completely and/or till such demand is not set aside in accordance with law.

24. A further submission has been made by the learned counsel for the petitioners that pursuant to the reports so submitted by the Head of the Joint Team, there were certain sub-committees formed for the purpose of verification as regards the ad-valorem excise duty and VAT by bifurcating those saleable stocks with unfit and dead stocks. It is therefore the submission of the learned counsel for the petitioners that the respondent authorities, more particularly, the Commissioner of Excise should also be directed to take note of those aspects of the matters while demanding the establishment charges. The said submission is duly noted and consequential directions are therefore given hereinafter.

25. The instant writ petitions therefore stand disposed off with the following observations and directions :-

(i)The petitioners herein are liable to pay the establishment charges in terms with Clause 9 of the order dated 29/8/2016 till payment of the ad-valorem excise duty as well as the VAT on the basis of the orders passed by the authorities in terms with Clause 3 of the office order dated 29/8/2016 are not paid or such amount so demanded are not set aside in accordance with law. The Respondent Excise Department is given the liberty to take such action as deemed fit for realising the establishment costs.

(ii)The Respondent Authorities and more particularly the Commissioner of Excise

is directed to take a definitive decision in respect to unfit/the dead stock lying in the warehouses of the petitioners within a period of 2 months from the date a certified copy of the instant judgment is served upon the Commissioner of Excise and the decision so taken be informed to the petitioners thereupon.

(iii)The petitioners would be at liberty to place such materials before the Commissioner of Excise to show as regards the amounts the petitioners have paid as well as the observations and findings of the Sub Committees and if during such verification, it is found that the petitioners have already paid the amounts in terms with the demands so made under Clause 3 of the order dated 29/8/2016, then from such date the petitioners have already paid their dues, the petitioners would be not liable for the payment of the establishment charges.

(iv)On the facts of the case, this Court is not inclined to impose any costs.

JUDGE

Comparing Assistant