IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.913 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

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M/s Ganpati Tobacco Products Pvt. Ltd. Near Desi Wine Factory, Kothia B.M.P.-6, Rahua, Muzaffarpur, through its Managing Director namely Prakash Kumar Sharma, son of Late Madan Lal Sharma, resident of Mohalla Chhata Bazar, P.S. Town, District Muzaffarpur. .... Petitioner.

Versus

1. The State of Bihar.
2. Principal Secretary, Department of Prohibition and Excise, Government of Bihar, Patna.
3. Excise Superintendent, Muzaffarpur.
4. Inspector, Excise, Muzaffarpur (East-cum-West), District Muzaffarpur.

.... Respondents.

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Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Adv.
Mr. Nilesh Kumar, Adv.

For the Respondents : Mr. Anshuman Singh, AC to PAAG-1.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-11-2016

Heard learned counsel for the petitioner and the State. Perused the counter affidavit and rejoinder thereto. With consent of parties, this writ petition is being disposed of at this stage itself.

2. The present writ petition has been filed for unsealing and releasing the premises of the petitioner Company, which was sealed by the State Excise Officials on 24.05.2016, in pursuance to which criminal cases, being Excise Case No.169 of 2016 and Excise Case No.170 of 2016, were instituted (in the counter affidavit State states that, in fact, it ought to have been one case) for alleged violation of the Bihar Excise Act, 1915, as it then existed.

3. Having perused the records and the seizure list, we find that it is undisputed that there is a very large piece of land enclosed by a boundary and having one main access gate. In the said enclosed compound, there are three independent industrial units operating. One, M/s Riga Sugar Distillery and Beverage Store Limited, which earlier had a licence to produce country liquor in sachet. The second industrial unit there is of the petitioner, which has a central excise licence to manufacture cigarette and tobacco products. It had yet to commence production and the central excise authorities have been asking them to speed up the installation process and start production of cigarette. The third is another industrial unit making paper plates etc.

4. At this stage, we would like to note the contention as raised in the counter affidavit that the management of the Riga Industries and the cigarette company were same or similar. In the rejoinder, Form-32, as required under the Indian Companies Act, has been brought on record to show that all those persons, who were connected with the Riga Industries aforesaid, being Gupta family, withdrew from petitioner's company in the year 2013 itself and the present management has no connection with the said Riga Industries.

5. It appears that upon introduction of prohibition and amendment of the Bihar Excise Act, 1915, with effect from 31.03.2016, possession, production, consumption and storage of country liquor was absolutely prohibited. The Riga Industries aforesaid, as noted above, was earlier licensed to manufacture and sale country liquor in sachet. Accordingly, on 31.03.2016, the State Excise officials have come and sealed the entire premises of the Riga Industries aforesaid. Later with effect from 05.04.2016, even the trade in Indian Made Foreign Liquor was prohibited by State.

6. It appears that allegedly on a tip off, on 24.05.2016, the State Excise officials visited the compound where the three industries are located. Allegedly, upon inspection of the Riga Industries premises, they found large number of Indian Made Foreign Liquor (hereinafter in short 'IMFL') bottles. The seizure list is appended to the writ petition, which undisputed terms clearly states that the IMFL were recovered from the premises of the Riga Industries aforesaid. The State Excise Authorities sealed the aforesaid Riga Industries industrial premises but, while doing so, in purported exercise of powers under Section 68-G of the Bihar Excise Act, 1915, as amended on 31.03.2016, they sealed the premises of the petitioner's industrial unit and the other industrial unit as well as the main gate to the compound. This writ petition challenges this action so far as it seals the premises of the petitioner's unit and entrance to the compound.

7. Mr. Ajay Kumar Thakur, learned counsel appearing in support of the writ petition, submits that the authorities no doubt have power to seal "premises or part thereof" where liquor is found. Under Section 68-G of the Bihar Excise Act, 1915, as amended on 31.03.2016, the use of expression "premises or part thereof", with the purpose for which power is vested clearly predicate that it is the premises in which liquor is found. To illustrate, in a building in one room liquor is found, the whole building cannot be sealed unless it is the building in occupation and in possession of a single owner. Otherwise, the section itself would become vulnerable to attack on grounds of arbitrariness. The only allegation being that IMFL was recovered from Riga Industries industrial premises; other premises in the compound could not be sealed.

8. We have already noted the contention in the counter affidavit that State thought that the management of the three industrial units in the said compound were common; such an action was justified to be taken. We have found that such a premise had no foundation. Even in the counter affidavit, it is not stated that even a single bottle of liquor was recovered from the premises of the petitioner's industrial unit. We are, therefore, of the considered opinion that petitioner's industrial unit premises, not being the offending unit or the premises in any manner; it ought not to and could not have been sealed for an alleged violation being committed by the Riga Sugar Industries, which is adjacent and independent industrial unit.

9. In the premise aforesaid, we have no option but to hold that the sealing of petitioner's premises and the compound in which it is located is wholly unauthorized and without jurisdiction. We accordingly direct the State Excise Authorities to unseal the premises of the petitioner's company as well as the main gate of the compound so that the petitioner's premises can be effectively used within one week.

10. Accordingly, this writ petition is allowed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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