IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7432 of 2015

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M/s Welcome Distilleries Pvt. Ltd., a registered company incorporated under the Companies Act, 1956 having its registered office at 2nd Floor, Super Market, Agrasen Chowk, Bilashpur, Chattisgarh and its distillery at Chherkabandha, Thana Kota, District Bilashpur, Chattisgarh through its Assistant General Manager Shri Sanjay Pandey, son of Shri R.L. Pandey, resident of H-2/100, Narmada Nagar, Bilashpur, Chattisgarh.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner, Excise and Prohibition, Government of Bihar, Patna.
2. The Secretary cum Commissioner, Excise and Prohibition, Government of Bihar, Patna.
3. The Collector, Nawadah.
4. The Superintendent of Excise, Nawadah.
5. The Inspector of Excise, Nawadah.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 7762 of 2015

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M/s Welcome Distilleries Pvt. Ltd., a registered company incorporated under the Companies Act, 1956 having its registered Office at 2nd Floor, Super Market, Agrasen Chowk, Bilashpur, Chattisgarh and its distillery at Chherkabandha, Thana Kota, District - Bilashpur, Chattisgarh through its Assistant General Manager Shri Sanjay Pandey. Son of Shri R.L. Pandey. Resident of H-2/100, Narmada Nagar, Bilashpur, Chattisgarh.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner, Excise and Prohibition, Government of Bihar, Patna.
2. The Secretary cum Commissioner, Excise and Prohibition, Government of Bihar, Patna.
3. The Collector, Jahanabad.
4. The Superintendent of Excise, Jahanabad.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 7822 of 2015

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M/s Welcome Distilleries Pvt. Ltd., a registered company incorporated under the Companies Act, 1956 having its registered office at 2nd Floor, Super Market, Agrasen Chowk, Bilashpur, Chattisgarh and its distillery at Chherkabandha, Thana Kota, District - Bilashpur, Chattisgarh through its Assistant General Manager Shri Sanjay Pandey, Son of Shri R.L. Pandey. Resident of H-2/100, Narmada Nagar, Bilashpur, Chattisgarh.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner, Excise and Prohibition, Government of Bihar, Patna.
2. The Secretary cum Commissioner, Excise and Prohibition, Government of Bihar, Patna.
3. The Collector, East Champaran, Motihari.
4. The Superintendent of Excise, Motihari.
5. The Inspector of Excise, Motihari.
6. The Bihar State Beverage Corporation Limited, through its Managing Director, Bihar, Patna.
7. The Managing Director, Bihar State Beverage Corporation Limited, Bihar, Patna.
8. The Depot Manager, Bihar State Beverage Corporation Limited, East Champaran, Motihari.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 8068 of 2015

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M/s Welcome Distilleries Pvt. Ltd., a registered company incorporated under the Companies Act, 1956 having its registered office at 2nd Floor, Super Market, Agrasen Chowk, Bilashpur, Chattisgarh and its distillery at Chherkabandha, Thana Kota, District Bilashpur, Chattisgarh througth its Assistant General Manager Shri Sanjay Pandey, Son of Shri R.L. Pandey Resident of H-2/100, Narmada Nagar, Bilashpur, Chattisgarh.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner, Excise and Prohibition, Government of Bihar, Patna.
2. The Secretary cum Commissioner, Excise and Prohibition, Government of Bihar, Patna.
3. The Collector, Nawadah.
4. The Superintendent of Excise, Nawadah.
5. The Inspector of Excise, Nawadah.
6. Bihar State Beverage Corporation Limited, Vidyut Bhawan, Bailey Road, Patna.
7. Sri Sudama Prasad, S/o Not known, Station Road, Ward No. 14, Nawadah, Group No. 3, Shop No. 4.
8. Sri Virundra Prasad, S/o Not known, Purani Bus Stand, Nawadah, Group No. 4. Shop No. 9.
9. Sri Brajesh Kumar Singh, S/o Not known, Garhper, Nawadah, Group No. 6, Shop No. 16.
10. Sri Virundra Prasad, S/o Not Known, Prasad Bigha, Nawadah, Group No. 4, Shop No. 3.
11. Sri Virundra Prasad, S/o Not known, Stadium Road, Nawadah, Group No. 4, Shop No. 13.
12. Sri Ratan Kumar, S/o Not known, Mirzapur, Nawadah, Group No. 1, Shop No. 2.
13. Sri Umesh Prasad, S/o Not known, Kalali Road, Nawadah, Group No. 2, Shop No. 10.
14. Sri Prem Sagar, S/o Not known, Station Road, Nawadah, Group No. 7, Shop No. 6.

15. Sri Valmiki Prasad, S/o Not known, Hanuman Nagar, Bypass Road, Nawadah, Group No. 5, Shop No. 15.

.... Respondent/s

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Appearance :
(In CWJC No.7432 of 2015)
For the Petitioner/s : Mr. Satyabir Bharti, Advocate
Mr. Alok Chandra, Advocate
For the Respondent/s : Mr. Lalit Kishore- AG
(In CWJC No.7762 of 2015)
For the Petitioner/s : Mr. Satyabir Bharti, Advocate
Mr. Alok Chandra, Advocate
For the Respondent/s : Mr. Lalit Kishore, AG
(In CWJC No.7822 of 2015)
For the Petitioner/s : Mr. Satyabir Bharti, Advocate
Mr. Alok Chandra, Advocate
For the Respondent/s : Mr. Lalit Kishore, AG
(In CWJC No.8068 of 2015)
For the Petitioner/s : Mr. Kamal Kishor Singh
For the Respondent/s : Mr. Lalit Kishore, AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 07-08-2017

As common questions of law and facts are involved in all these cases, they are being disposed of by this common order.

The challenge in all these petitions are made to orders passed by the Chairman-cum- Member, Board of Revenue of Bihar whereby challenge was made to orders passed by the Collector of the District concerned with regard to recovery of excise duty and penalty from the petitioner under the Bihar Excise Act, 1915.

Primarily, on account of the fact that articles seized from the retail dealer, which was manufactured by the petitioner, did not meet the standard prescribed on testing, the impugned action is taken and the concurrent orders passed by the Collector of the District concerned and the Board of Revenue are challenged in all these four petitions pertaining to four districts for different periods primarily on account of the fact that the petitioner is a manufacturer, the material has not been seized from the manufacturing unit of the petitioner, it has been seized from the outlet of the retailer and the petitioner cannot be held responsible for any illegality committed by the retailer once the material was transferred by the petitioner to the Bihar State Beverage Corporation Limited which transferred the product to the retailer. Accordingly, contending that in view of the law laid down by a Division Bench of this Court in the case of **Spicy Beverage Pvt. Ltd. Versus The State of Bihar & Ors**. [2015(4) PLJR 312], the action taken against the petitioner is unsustainable; all these four petitions have been filed.

Sri Lalit Kishore, learned Advocate General appearing for the respondents fairly stated that even the principle laid down in the case of **Spicy Beverage Pvt. Ltd.** (supra) cannot be disputed by him, but he refers to the factors with regard to the present petitioner and it is said that in the case of the petitioner consistently on more than three occasions, the petitioner is found to have been indulged in identical acts. He was also blacklisted for this purpose and if the petitioner is consistently indulged in such acts, if taking note of these factors, the impugned action is taken, the principle laid down in the case of **Spicy Beverage Pvt. Ltd.** (supra) cannot be made applicable in the case of the petitioner.

Learned counsel for the petitioner has raised a further ground to say that the petitioner had challenged the quantification of the amount specifically by issuing show cause notice, but this issue has not been considered either by the Collector or the Board of Revenue. Accordingly, it is stated that the orders passed are without considering the materials available on record, particularly the show cause notice of the petitioner and the law laid down in the case of **Spicy Beverage Pvt. Ltd.** (supra) and is liable to be quashed.

Having heard learned counsel for the parties at length, we find that the Collector and the Board of Revenue have decided the issue based on the fact that the material seized showed that it was manufactured by the petitioner. However, the law laid down by the Division Bench of this Court in the case of **Spicy Beverage Pvt. Ltd.** (supra) came subsequently and the said law has not been placed for consideration before the Board of Revenue. However, the Board of Revenue and the statutory authority of the District concerned have taken note of the conduct of the petitioner in habitually committing identical illegalities and irregularities in the past and they have refused to interfere into the matter on such consideration. This may be a proper consideration, but while doing so, grounds canvassed by the petitioner in the show cause notice, the law laid down in the case of **Spicy Beverage Pvt. Ltd.** (supra), and the objection to the quantification of the demand made have not been adverted to.

That being the position, we allow all the four petitions in part and remand the matter back to the Board of Revenue to reconsider the revision petitions and decide it after taking note of the observations made hereinabove. On the petitioner filing a certified copy of this order and depositing 75% of the amount determined by the competent authority, namely the Collector of the District concerned, the Board of Revenue shall proceed to re-hear the revisions and decide them in accordance with law, preferably within a period of three months.

With the aforesaid, all the four petitions are allowed and disposed of.

Needless to emphasize that after producing the certified copy of the order, petitioner does not deposit 75% of the amount demanded, the Board of Revenue shall free to proceed in the matter in accordance with law.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.08.2017
Transmission Date	