IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.215 of 2012
Arising out of
Civil Writ Jurisdiction Case No. 3025 of 1992

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1. The State of Bihar through the Secretary to the Government of Bihar, Department of Excise & Prohibition, Vikas Bhawan, Patna
2. The Member, Board of Revenue, Bihar, Patna
3. The Commissioner of Excise, Bihar, Patna
4. The Deputy Secretary, Board of Revenue, Bihar Patna
5. The Collector, Banka
6. The Superintendent of Excise, Bhagalpur - in - Charge, Banka
7. The Superintendent of Excise, Shivshankar Chemical Industries (Bihar) Ltd. Jagdishpur, P.S. Rajoun, District - Banka

.... Petitioner/s

Versus

Shivshankar Chemical Industries (Bihar) Ltd. Jagdishpur, P.S. Rajoun, District - Banka, A Company Incorporated Under The India Companies Act, through its Director Shiv Kumar Kishorpuriya, S/o Sagarmull Kishorpuriya, Resident of D. Singh Road, P.S. Kotwali, District - Bhagalpur

.... Respondent/s

with

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Civil Review No. 217 of 2012

Arising out of

Civil Writ Jurisdiction Case No. 3690 of 1992

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1. The State of Bihar through the Secretary to the Government of Bihar, Department of Excise & Prohibition, Vikas Bhawan, Patna
2. The Member, Board of Revenue, Bihar, Patna
3. The Commissioner of Excise, Bihar, Patna

4. The Deputy Secretary, Board of Revenue, Bihar Patna
5. The Collector, Bhagalpur
6. The Superintendent of Excise, Bhagalpur
7. The Superintendent of Excise, Sultanganj Distillery, Sultanganj, District - Bhagalpur

.... Petitioner/s

Versus

Arun Chemical Industries Ltd. Sultanganj, P.S. Sultanganj, District - Bhagalpur through its Director Ramakant Sharma, S/o Late Pandit Ram Dayal Joshi, R/o Shree Baidhanath Ayurved Bhawan Road, P.S. Chiraiya Tand, District - Patna

.... Respondent/s

with

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Civil Review No. 218 of 2012

Arising out of

Civil Writ Jurisdiction Case No. 6360 of 1993

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1. The State of Bihar through the Secretary to the Government of Bihar, Department Of Excise & Prohibition, Vikas Bhawan, Patna
2. The Member, Board of Revenue, Bihar, Patna
3. The Commissioner of Excise, Bihar, Patna
4. The Deputy Secretary, Board of Revenue, Bihar Patna
5. The Collector, Gopalganj
6. The Superintendent of Excise, Gopalganj
7. The Superintendent of Excise, United Distillery Ltd. Mirganj, P.S. Mirganj, District - Gopalganj

.... Petitioner/s

Versus

United Distillery Ltd. Mirganj, P.S. Mirganj, District - Gopalganj through its General Manager Revindra Kumar Mohan (Ret), Son of T.N.Mohan (Ret), Residing at the Campus of United Distillery Ltd. Mirganj, P.S. Mirganj, District - Gopalganj

.... Respondent/s

with

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Civil Review No. 219 of 2012

Arising out of

Civil Writ Jurisdiction Case No. 3026 of 1992

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1. The State of Bihar through the Secretary to the Government of Bihar, Department of Excise & Prohibition, Vikash Bhawan, Patna
2. The Member, Board of Revenue, Bihar, Patna
3. The Commissioner of Excise, Bihar, Patna
4. The Deputy Secretary, Board of Revenue, Bihar Patna
5. The Collector, Patna
6. The Assistant Commissioner of Excise, Patna
7. The Superintendent of Excise, Hathidah Distillery, P.S. Hathidah, District- Patna

.... Petitioner/s

Versus

Mc. Dowell & Comp. Ltd., Hathidah, P.S. Hathidah, District Patna through its General Manager, Lalit Mohan Sharma, S/o Ram Kishore Sharma R/o Mc. Dowell & Co. Ltd. Campus at Hathidah, P.S. Hathidah, District - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D. Yadav, A.A.G.-9

For the Respondent/s : Mr. Satyabir Bharti, Advocate
Mr. G.P. Bimal, Advocate
Mr. Alok Chandra, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 09-02-2017

Heard learned counsel for the parties.

2. The present review petitions have been filed by the State to seek review of the order passed by a Division Bench of this Court on 14th of July, 2010 in C.W.J.C. Nos. 3025 of 1992, 3690 of 1992, 6360 of 1993 and 3026 of 1992 whereby, the notifications dated 24th of March, 1992 and 17th of October, 2005 imposing licence fee upon the writ-applicants were set aside, the same having been found beyond the legislative competence of the State as it was fee on the rectified spirit and denatured alcohol. While setting aside the notification, the Court ordered as under:-

> "28. At the time of admitting the writ petitions this Court had declined stay of the impugned demands observing that any deposit made shall be subject to the result to the case and in case of success shall be refundable with 9% interest. In view of the discussion, more particularly the Bihar Distillery (supra) case, and that the writ petitions have remained pending before this Court since 1992 for no fault of the respondent State, we do not consider it appropriate to impose onerous interest upon the State which in any event shall be paid from public funds. We therefore consider it appropriate to modify the interim order by directing that the deposit made shall be refunded with 4%

interest within six months of the presentation of a copy of this order before the respondents. If the payment is not made within time prescribed herein it shall carry interest at the rate of 9% from the date of expiry of six months."

3. In an appeal [Special Leave to Appeal (Civil) No. 22484 of 2011 (State of Bihar & Ors. Vs. Arun Chemical Industries Ltd.)] against the said order, the Hon'ble Supreme Court on 1st of February, 2012 set aside the order of refund of licence-fee in view of the argument of the State that even after striking down the provisions, the refund of the tax paid would amount to unjust enrichment and thus not refundable.

4. Learned counsel for the State submitted that the licence-fee levied is Rs. 7,50,000/- per annum and the burden of such licence fee has been passed over to the consumers, therefore, the refund of such licence fee will amount to unjust enrichment.

5. On the other hand, Mr. Satyabir Bharti, learned counsel for the writ-applicants submitted that the licence fee is one time annual payment, the burden of which is not passed on to the consumers. In support of the contention that burden has not been passed on to the consumers, the reliance is placed upon the invoices pertaining to the period of pre-revision licence fee and post revision licence fee, which are the same.

6. We have heard learned counsel for the parties and

find no ground to review the order passed by this Court on 14th of July, 2010.

7. The concept of unjust enrichment arises in case of collection of taxes or fee and its passing on to the numerous consumers. Thus the burden of tax or fee is passed on to the consumers. The levy having been declared illegal, such person would not be entitled to refund as he has already passed on burden to the consumer as it is not possible to claim the amount of tax or fee paid by the ultimate consumer. But, in case of one time annual licence fee, the amount of which is minuscule to the annual sale of the unit, it cannot be said that the burden of annual licence fee has passed on to the consumers, which is apparent form the constant price of the product.

8. Thus, we do not find any error apparent on record which may warrant review of the order as the burden of the levy has not been passed on to the consumers.

9. The State may now refund the amount in terms of the order dated 14th of July, 2010 within six months at the rate of 4 per cent simple interest but in case the amount is not refunded within six months, the State shall be liable to pay interest at the rate of 9 per cent.

10. The review applications stand dismissed

accordingly.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	16.02.2017
Transmission Date	