IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6999 of 2015

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Sanjeev Kumar Yadav, Son of Sri Santlal Yadav, resident of Rahmatpur, P.O. & P.S. Asarganj, District Munger

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary Cum Commissioner, Excise and Prohibition Department, Government of Bihar, Patna
2. The Member, Board of Revenue , Bihar , Patna
3. The Excise Commissioner, Bihar , Patna
4. The Collector, Munger
5. The Superintendent of Excise , Munger

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti, Advocate
For the Respondent/s : Mr. Manish Dhari Singh, A.C. to A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-12-2017

Having heard learned counsel for the parties, we find that petitioner was granted licence for establishment of a shop under the Excise Act for the Excise Year 2013-14. Certain officials of the Excise Department including one Sri Yogendra Kumar, a clerk, committed defalcation and a sum of Rs. 2,92,000/- said to have been deposited by the petitioner in cash for which receipt was issued by the said clerk on 29.03.2013 was found to be false and fabricated document. Accordingly, on audit objection being received petitioner was directed to show cause and make good this defalcation committed by Yogendra Kumar. Petitioner objected to the same and indicated that he has paid the amount to the clerk concerned Sri Yogendra Kumar for which correct receipt has been issued but when certain coercive actions were indicated against the petitioner for the subsequent lilcence granted for the year 2014-15, to bring to an end the issue pertaining to 2013-14 petitioner deposited the amount of Rs. 2,92,000/- and thereafter for the year 2013-14 no action was taken against the petitioner. However, surprisingly for the next Excise Year 2014-15 by the impugned order not only the licence of the petitioner was cancelled but the security amount and all other deposits made by the petitioner by way of advance have been forfeited.

Grievance of the petitioner is that for some act committed in the Excise year 2013-14 a coercive action for the subsequent year 2014-15 is not permissible. It is also argued by the learned counsel that the so-called illegality committed in the year 2013-14 was never admitted by the petitioner.

Learned counsel invites our attention to the show-cause filed by the petitioner to the notice Annexure-9 dated 29.07.2014 vide Annexure-10 series and the deposit made vide challan at page 125 to argue that the petitioner had only deposited the amount without admitting the allegations made in the show-cause notice Annexure-9 only to bring to an end the dispute pertaining to Excise Year 2013-14 and treating this to be an admission on the part of the petitioner, it is argued that the impugned action has been taken, which is without the authority of law.

Learned counsel for the respondents supported the act of the State Government and by referring to the orders passed tried to indicate that once in reference to the show-cause notice issued for the year 2013-14 petitioner deposited the sum of Rs. 2,92,000/- it amounts to admission of the illegality committed by the petitioner and if considering the same for the subsequent year on account of non-disclosure of the illegality committed for the previous year if the impugned action is taken, the same does not warrant any interference.

We are unable to accept the aforesaid contention on two reasons. First of all, for the so-called defalcation or illegality committed in the Excise Year 2013-14 no inquiry has been conducted and the petitioner has not been held guilty being party to any such defalcation, on the contrary records indicate that the investigation into the matter and the role played by Sri Yogendra Kumar, the clerk concerned is still under investigation and there is no report to say that the petitioner has committed the offence along with Sri Yogendra Kumar. That apart, the explanation submitted by the petitioner to Annexure 9 the show-cause notice clearly shows that the petitioner does not admit the allegations made against them but only to avoid complications for the next financial year 2014-15, petitioner themselves deposited the amount of Rs. 2,92,000/-. The act of the petitioner in replying to the show-cause notice and depositing the amount of Rs. 2,92,000/- was within the know of the department concerned and inspite of the same the action taken by them for forfeiting the amount and the coercive action for the next Excise year 2014-15 without there being any illegality for the said Excise Year in our considered view in the facts and circumstances of the case was unsustainable. That apart, for the Excise Year 2014-15 the contract in question was entirely different and for any illegality committed for the earlier Excise Year 2013-14 from the contract for the subsequent Excise Year 2014-15 no coercive action should be taken.

On repeated questions being put, learned counsel for the State was unable to bring to our notice any statutory rule, regulation or provision which permits taking coercive action for a subsequent Excise year in connection with any illegality committed in the previous year that also when there was no financial loss to the State Government.

Keeping in view the aforesaid, we are of the considered view that the action in question is arbitrary and illegal and cannot be sustained.

Accordingly, we allow this petition, quash the order dated 12.08.2014 passed by the Collector, Munger in Excise Case No. 02/2014-15, the order dated 15.12.2014 passed by the Excise Commissioner in Excise Appeal No. 20/2014 vide Annexure-15 and the order dated 13.03.2015 passed by the Board of Revenue in Case No. 49 of 2014 vide Annexure-17 and direct for refund of the entire amount recovered from the petitioner.

With the aforesaid, the petition stands allowed and disposed of. The amount be refunded to the petitioner now within a period of three months from the date of receipt of a certified copy of this order.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	02.01.2018
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