IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9613 of 2017

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1. Cosmos Beverages Pvt. Ltd. Thakur Nagar (Eastern By Pass Road), P.O. Sahudani Hat, District - Jalpaiguri - 735135 (W.B.) through its Power of Attorney holder Bivash Chandra Bose C/o M/S East India Transport Agency, having its Reg. Office at 20 B Abdul Hamid Street, Kolkata - 700069 (W.B.).
2. M/S East India Transport Agency, A Unit of Elta India Ltd. HO. 20B, Abdul Hamid Street, Kolkata - 700069 (W.B.)

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Kishanganj, Bihar.
4. The Excise Superintendent, Kishanganj, Bihar.
5. The Deputy Excise Superintendent, Kishanganj, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kr. Singh, Advocate
Mr. Dharmendra Kr. Singh, Advocate
Mr. Rana Pratap Singh, Advocate

For the Respondent/s : Mr. Anil Kr. Sinha-GA-1

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-07-2017

An order of confiscation challenged in Appeal No.16 of 2017 has been upheld vide Annexure 7 on 22.6.2017 and it is alleged that in the memorandum of appeal and the grounds raised therein various grounds were canvassed to say that the order passed by the Collector exercising jurisdiction under Section 55 (6) are not tenable. It is the case of the petitioners that none of their grounds have been considered.

Having heard learned counsel for the parties, we find that against the order of confiscation dated 9.5.2016 passed by the District Magistrate, Kishanganj, an appeal was filed and various grounds have been raised in the appeal to assail the order passed by the confiscating authority. However, in the impugned order passed by the Commissioner, as contained in Annexure 7 dated 22.6.2017, except for clarifying the fact in the first paragraph, submission of learned counsel for the parties in the second paragraph and the submission of the counsel representing the Collector, Kishanganj in the third paragraph, the learned statutory authority, the Excise Commissioner only records a finding to say that on the material adduced before him, in the facts of the case, no case for interference is made out and the appeal is dismissed.

We are of the considered view that the Commissioner exercising statutory powers under the Bihar Excise Amendment Act, 2016 was required to advert to consider each and every ground indicated in the memorandum of appeal, advert to consider them and thereafter applying his mind on the grounds raised has to decide by accepting or rejecting the ground by a speaking order showing application of mind. In the manner in which the appeal in question challenging the confiscation has been decided, as is seen from the order in question, this legal aspect of the matter has not been complied with and, therefore, this is a good ground to allow this writ petition, quash the order dated 22.6.2017 passed by the Excise Commissioner, Kishanganj and remand the matter to re-consider and decide the issue within 30 days from the date of receipt/production of a copy of this order.

Keeping in view the aforesaid observation made by us, the application is allowed and disposed of with the aforesaid.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29.7.2017
Transmission Date	N/A