**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP (227) No. 2591 of 2009**

1. State of Chhattisgarh through Secretary, Department of Excise, Mantralaya, D.K.S. Bhawan, Raipur (CG)
2. The Collector (Excise), Bilaspur (CG)
3. Excise Commissioner, State of Chhattisgarh, Raipur (CG)

**---- Petitioners**

**Versus**

1. M/s Som Distillery Pvt. Ltd. 23-Zone-2, Maharana Pratap Nagar, Bhopal (M.P.)
2. The Board of Revenue, Bilaspur (CG)

**---- Respondents**

| | | |
|---|---|---|
| For Petitioners | : | Mr.P.K.Bhaduri, G.A. |
| For Respondent No.1 | : | None present |

**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**07/02/2017**

1. Heard.

2. The Collector (Excise), Bilaspur passed an order dated 27.7.2005 imposing penalty of ₹ 3,19,903/- for loss caused during the course of transit of country-made liquor in sealed bottles from manufacturing warehouse situated in the Bilaspur supply zone to the storage warehouse, Bilaspur during the period from 1.4.2002 to 31.3.2004. The order of the Collector was challenged by respondent No.1 before the Excise Commissioner. The Excise Commissioner after hearing both the parties by order dated 17.8.2006

affirmed the order of the Collector (Excise). Feeling aggrieved against the order of the Collector (Excise) and the Excise Commissioner, respondent No.1 herein preferred an appeal before the Board of Revenue. The Board of Revenue after considering all the submissions on merits by order dated 23.9.2008 dismissed the appeal affirming the orders of the Collector (Excise) as well as the Excise Commissioner. Respondent No.1 did not challenge the order of the Board of Revenue before the higher forum, but preferred review petition before the Board of Revenue. The Board of Revenue by order dated 17.12.2008 has held that the Collector (Excise) has committed legal error in passing the combined order and did not give an opportunity of hearing separately to each of the cases and that has caused prejudice and set aside the order of the Collector (Excise) as well as the Excise Commissioner. Feeling aggrieved against the said order, the present writ petition has been filed.

**3.** Mr.P.K.Bhaduri, learned Government Advocate for the petitioners/State, would submit that scope of review is extremely limited and unless there is an error apparent on the face of record pointed out by a person for making the review application, the order under review cannot be set aside by the Board of Revenue exercising the limited jurisdiction of review.

4. No one has appeared on behalf of respondent No.1 though served.

5. It is well settled that if the review petitioner is allowed to argue on a question of appreciation of evidence, it would amount to converting a review petition into an appeal, which is not sustainable in law.

6. Principle of law is well settled by several judicial pronouncements of the Hon'ble Supreme Court in the cases of **Smt. Meera Bhanjan Vs. Smt. Nirmala Kumar Choudhary**[1]**, Lily Thomas. etc. Vs. Union of India and others**[2]**, Ajit Kumar Rath Vs. State of Orissa and others**[3]**, Government of T.N. and Others Vs. M. Ananchu Asari and others**[4].

7. In the matter of **Kerla State Electricity Board Vs. Hitech Electrothermics & Hydropower Ltd. And others**[5], the Supreme Court observed as under:-

> "10. This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by December 31, 1996. This is a finding of fact recorded by this Court on the basis of the appreciation of evidence produced before the Court. In a review petition it is not

1 AIR 1995 SC 455
2 AIR 2000 SC 1650
3 AIR 2000 SC 85
4 (2005) 2 SCC 332
5 (2005) 6 SCC 651

> open to this Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the Court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

8. Applying the well settled principle of law laid down by the Supreme Court in the aforesaid judgments, if the facts of the present case are examined, it is quite apparent that the Board of Revenue has dismissed the revision filed by respondent No.1 herein on merits, however, allowed the review petition on new grounds, which were not raised in the revision. The new grounds that in review petition were raised were considered by the Board of Revenue and earlier order dated 23.9.2008 was recalled and order of the Collector (Excise) and the Excise Commissioner were set aside, which is wholly impermissible in law. Respondent No.1 has failed to point out any error apparent on the face of the record in the order of the

Collector (Excise) and the Excise Commissioner and as such, the Board of Revenue has permitted to convert the review petition into an appeal.

9. Accordingly, the order impugned is set aside and the orders of the Collector (Excise) as well as Excise Commissioner are restored.

10. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-