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HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No.4132 of 2009

State of Chhattisgarh through the Secretary, Department of Commercial Tax, D.K.S. Bhavan, Raipur (CG)

---- Petitioner

Versus

M/s Chhattisgarh Distilleries Ltd. D-1 Licensee, Khapri, Kumhari, District Durg (CG)

---- Respondent

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And

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M/s Chhattisgarh Distilleries Ltd. D-1 Licensee, Khapri, Kumhari, District Durg (CG)

---- Respondent

For Petitioner : Mr.Prasun Kumar Bhaduri, Govt. Advocate
For Respondent : Mr.Manoj Paranjape, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11/12/2017

1. Since common question of law and fact is involved in these batch of writ petitions, they are heard together and are being disposed of by this common order.

2. In these batch of writ petitions, the petitioner/State has called in question the legality and validity of order dated 2.9.2008 passed by the Board of Revenue, whereby the appeal filed by the respondent herein under Section 62 (2) of the Chhattisgarh Excise Act, 1915 has been allowed by the Board of Revenue and order imposing penalty passed by the Excise Commissioner under Rule 8(3) of the Chhattisgarh Distillery Rules, 1995 (hereinafter called as 'the Rules of 1995') has been set aside.

3. Mr.Prasun Kumar Bhaduri, learned Government Advocate appearing for the petitioner/State, would submit that order passed by the Excise Commissioner is in accordance with law as the respondent Company failed to maintain at the distillery i.e. minimum stock of spirit as required by the Excise Commissioner under sub-rule (4) of Rule 4 of the Rules of 1995. Therefore, the Excise Commissioner has rightly imposed penalty upon the respondent Company.

4. On the other hand, Mr.Manoj Paranjape, learned counsel appearing for the respondent Company, would submit that the contract was awarded to the respondent Company for a period of 2 years i.e. since 1.4.2002 to 31.3.2004 in WP227 No.4132 of 2009, since 1.4.2006 to 31.3.2008 in WP227 No.4133 of 2009 and since 1.4.2006 to 31.3.2008 in WP227 No.4134 of 2009 for supply of spirit and categorical findings were recorded by the Excise Commissioner in paragraph 3 that there was no failure to supply country spirit by the licensee and no loss has been caused to the Government. However, it is only a violation of sub-rule (4) of Rule 4 of the Rules of 1995. Therefore, the Board of Revenue has rightly set aside the order of the Excise Commissioner.

5. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

6. It is correct to say that the Excise Commissioner has clearly recorded a finding that the respondent company has supplied the country spirit without any fail and no loss has been caused by the respondent company to the Government by not maintaining the minimum stock of spirit as prescribed in sub-rule (4) of Rule 4 of the Rules of 1995, but thereafter imposed penalty, which was set aside by the Board of Revenue.

7. The Supreme Court in the matter of **Excel Crop Care Limited Vs. Competition Commission of India and another**[1] has held thus:-

> "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of description of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

8. In view of clear-cut finding of the Excise Commissioner and in

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1 (2017) 8 SCC 47

view of the principle of law laid down by the Supreme Court in **Excel Crop Care Limited** (supra), particularly finding that no loss has been caused by the respondent Company to the Government in not maintaining the minimum stock of spirit, the Board of Revenue is justified in setting aside the order imposing penalty. I do not find merit in these writ petitions.

9. Accordingly, the writ petitions being without substance are liable to be and are hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-