NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2532 of 2017

Arvind Kumar Singh S/o Kailash Nath Singh Aged About 43 Years R/o Mahalpara Road Post Baikunthpur District Korea Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary To The Government Of Chhattissarh, Departmetn Of Excise, Mahanadi Bhavan Mantralaya, Naya Raipur District Raipur Chhattisgarh.

2. The Commissioner, Department Of Excise, Raipur District Raipur Chhattisgarh .

3. Assistant Commissioner Excise, Korea District Korea Chhattisgarh.

4. Collector Excise , Korea, District Korea Chhattisarh.

5. Bank Of India Through The Branch Manager, Baikunthpur, Disrtict Korea Chhattisgarh.

6. Officer On Special Duty, Department Of Excise, Raipur District Raipur Chhattisgarh.

---- Respondents

For Petitioner : Mr. Manoj Paranjpe, Advocate
For State/Respondents : Mr. Arun Sao, Dy.A.G. and Mr. Anand Shukla, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

12/09/2017

(1) Learned counsel appearing for the parties would submit that issue in question is squarely covered by order of this Court dated 11.08.2017 passed in Writ Petition (C) No.1812 of 2017 *(Arvind Panda Vs. State of Chhattisgarh & Others)* and connected matters in which, this Court has observed as under:-

> "**16**. Security was furnished by way of bank guarantee as

provided under Rule 13 of the Rules, 2002. Rule 21 of the Rules, 2002 deals with adjustment/refund of security amount. It states as under:-

"21. Adjustment/refund of security amount- The security amount shall be liable to adjustment against the settlement of dues and claims to the government of licence fee/duty penalty or any other dues. Security amount shall be refundable after the final settlement of all the claims and dues to the State Government."

17. A conjoint reading of the aforesaid two Rules would make it clear that licensee should furnish the security which can be adjusted against the settlement of dues and claims regarding the contract for which license was awarded and it is refundable after settlement of all the claims and dues to the State Government. It is, thus, crystal clear that excepting the claims and dues of the State Government the security, as furnished by the licensee, cannot be utilized for any other purpose. The contention of the State that direction has been issued by the Commissioner of Central Excise regarding imposition of service tax on the licensee fees of the licensee deserves to be noticed for rejection. Firstly, in the order Annexure P-1 no such reasons has been assigned by respondent No.4 and even that is not the terms/conditions in the bank guarantee issued by the Bank, therefore it cannot be the reasons of directing invocation of bank guarantee and for that reason, the bank guarantee cannot be invoked and encashed.

18. In view of above-mentioned analysis, this Court is of the considered opinion that the bank guarantee furnished by the petitioners which was conditional in nature, cannot be directed to be encashed dehors the terms/conditions of bank guarantee by the impugned memo (Annexure P-1) and the reason assigned subsequently in the returns filed

is unacceptable, that cannot be made basis for invoking and directing encashment of bank guarantee. Such a direction issued by the Commissioner, Excise is contrary to the terms/conditions of bank guarantee, and irrational and arbitrary as well.

19. As a fallout and consequence of above-stated discussion, the impugned memo (Annexure P-1) in all the above-stated writ petitions, particulars of bank guarantee of which are enclosed as Annexure 'A' with this order, are quashed and it is held that the respondent/State are not entitled to invoke/encash the bank guarantee.

(2) Accepting the submission of learned counsel for the parties, the writ petition is disposed of in similar terms of Arvind Panda (supra) in Writ Petition (C) No.1812/2017.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-