

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14270 of 2016

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M/s Welcome Distilleries Pvt. Ltd., a registered company incorporated under the Companies Act, 1956, having its registered office at 2nd Floor, Super Market, Agrasen Chowk, Bilashpur, Chattisgarh and its distillery at Chherkabandha, Thana Kota, District Bilashpur, Chattisgarh, through its Assistant General Manager Abinash Kumar Son of Late Bisheshwar Prasad, resident of Mohalla Makhaniya Kuan, P.S. Pirbahore, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Rohtas, Sasaram.
4. The Assistant Commissioner of Excise, Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate Mr. Alok Chandra, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-08-2018

Admit.

On the consent being given by the respective parties and in the facts and circumstances of the case, this petition is taken up for final decision today.

By filing the present petition under Article 226 of the Constitution of India, the petitioner has challenged the impugned order dated 03.08.2016 passed by the Assistant Commissioner of Excise, Rohtas, Sasaram by which the said authority has imposed a



penalty of Rs.8,19,136/- on the ground that 6339.50 LPL of liquor was found in the warehouse.

Sufficient number of submissions have been supplied by the respective parties, one of which is that the impugned order suffers from non-application of mind and the same is a non-speaking order and, that too, without considering the reply to the show cause notice filed by the petitioner.

Learned counsel appearing on behalf of the respondents is not in a position to satisfy the Court that while passing the impugned order, the authority had considered the reply to the show cause notice filed by the petitioner. He is also not in a position to satisfy this Court that in the impugned order whether any reasons have been assigned by the authority while passing the impugned order or not.

Having heard learned counsel appearing on behalf of respective parties and considering the impugned order as well as the counter affidavit, it appears that while passing the impugned order, the authority has not at all considered and dealt with the reply to the show cause notice filed by the petitioner.

From the impugned order, it appears that only on the basis of some instructions/directions given by the higher authority, mechanically the impugned order of penalty has been passed.



Under the circumstances, it can safely be said that the impugned order suffers from non-application of mind by the appropriate authority, who issued the notice and has passed the impugned order. Thus, the impugned order can be said to be in breach of principles of natural justice. On the aforesaid ground alone, the impugned order deserves to be quashed and set aside.

For the reasons stated above, the present petition succeeds. The impugned order dated 03.08.2018 is set aside. However, it will be open for the appropriate authority to pass a fresh order in accordance with law and on its own merit and after considering the reply to the show cause notice which is already filed by the petitioner.

With this, the present petition is allowed. No costs.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

V.K.Pandey/-
Vikash/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	01.09.2018
Transmission Date	N.A.

