IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.822 of 2017

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Vijay Kumar, Son of Late Thakur Prasad Sao, resident of village - Nayagaon, P.S. Kotwali, District - Munger

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Cum Commissioner Department of Excise Govt. of Bihar, Patna
2. The Superintendent of Excise, Munger
3. The District Certificate officer, Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. T.N. Maitin, Sr. Advocate
Mr. Rajeev Kumar Sinha, Adv

For the Respondent/s : Mr. KUMAR MANISH-SC5
Mr. Kumar Pankaj, AC to SC 5

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 29-06-2018

The present writ petition has been filed for quashing the notice dated 23.11.2016 issued under Section 7 of the Bihar & Orissa Public Demand Recovery Act, 1914 (for short 'the PDR Act') and the entire proceeding in Certificate Case No. 13/16-17.

2. Mr. T.N. Maitin, learned Senior Counsel appearing on behalf of the petitioner, apart from submitting that the proceedings for recovery of the demand in question is illegal on the ground that the same did not constitute a public demand under the PDR Act, points out that the certificate itself contains various infirmities which invalidates the entire proceeding as the same has been signed by the Excise

Superintendent, Munger and countersigned by the Certificate Officer as also that the requisite verification has not made thereon. It is further submitted that the demand in question related to the year 2010-11 and as such recovery through the certificate proceeding was time barred, having been initiated after more than three years,

3. Learned counsel for the respondents on the other hand, opposes the writ petition and relies on the counter affidavit filed on behalf of the respondent nos. 2 and 3. It is submitted that the petitioner ought to have filed his objection petition under Section 9 of the PDR Act and have the same decided rather than approaching this Court in its extra ordinary writ jurisdiction.

4. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. A bare perusal of the certificate filed by the Certificate Officer (Annexure-3) discloses that the same has been signed by the Excise Superintendent, Munger as well. More significantly, the verification and certification required to be endorsed on the certificate by the Certificate Officer has been left blank. Such infirmity goes to the root of the matter. The plea of the petitioner that a copy of the certificate and the audit report have not been supplied with the notice under Section 7 of the PDR Act has not been controverted. The provisions of Section 7 of the PDR Act clearly requires a copy of the certificate to be supplied along with the notice to

the certificate debtor which is a mandatory requirement but the same has not been complied with in the present case.

5. Under the circumstances, the certificate dated 06.06.2016 (Annexure-3) is hereby quashed and the matter remanded to the Certificate Officer to file a fresh certificate in accordance with law before proceeding further in the matter.

6. The writ petition stands allowed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.07.2018
Transmission Date	NA