IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3189 of 2017

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M/s Ravi Shankar Traders, a partnership firm, having its office at Kabutar Gali, Bal Kishunganj, Patna-7, through its partner Shri Sunil Kumar Sah, son of Late Devbilash Prasad, resident of Mohalla Chitratoli Road, Ara, P.S. Town Ara, District- Bhojpur

... ... Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Registration and Excise Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Bhojpur
4. The Assistant Commissioner of Excise, Bhojpur

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 3389 of 2017

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M/s Bhojpur Wine Traders, a partnership firm, having its office at Station Road, Nawada, District Bhojpur through its partner Shri Ramji Prasad, son of Late Parmeshwar Dayal Sah, resident of Mohalla Rasi Bagan, East Nawada, P.S. Nawada, District Bhojpur

... ... Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Registration and Excise Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Bhojpur
4. The Assistant Commissioner of Excise, Bhojpur

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 3189 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti, Adv.
Mr. Alok Chandra, Adv.
Ms. Aparna Arun, Adv.
For the Respondent/s : Mr. Bibhuti Pandey, Adv.
(In Civil Writ Jurisdiction Case No. 3389 of 2017)
For the Petitioner/s : Mr. Satyabir Bharti, Adv.
For the Respondent/s : Mr. Bibhuti Pandey, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-01-2018

Challenging the orders passed by the Commissioner, Bihar and the consequential certificate proceeding initiated against the petitioner vide common orders dated 29.4.2011, demanding various sums for the retail country liquor shop granted to the petitioner for settlement area Arrah, Piro and Jagdishpur during the financial year 2005-2006, this writ petition has been filed.

Facts, in nutshell, go to show that the petitioner was granted settlement for the shops in question in accordance to the statutory rule and a provisional settlement under Rule 29 of the statutory provisions was ordered and, according to the petitioner, he ran the shops, paid the settlement duty every month and thereafter when the period of licence was over, the Collector issued a certificate indicating that all dues have been paid. After the aforesaid position was settled in the year 2005-2006, it is stated that, based on certain audit objection raised, an order Annexure 8 was communicated to the petitioner on 29.4.2011 demanding a further sum of Rs.347.11 lacs as arrears of duty for the work done.

It is the case of the petitioner that without hearing him, the aforesaid order was communicated and when certificate proceedings were held, he approached this Court in C.W.J.C. No.19149/2013, he was granted liberty to raise objection before the

Certification Officer and when such objections were raised, the petitioner was served with an order, Annexure 8, indicating the order on the basis of which the amount was being recovered.

It is the case of the petitioner that the recovery ordered for the period 2005-2006 after the settlement was made without hearing the petitioner behind his back and only based on the audit objection, that also without considering the fact that the settlement was only a provisional settlement, the action is unsustainable.

Even though by filing a counter affidavit respondents have tried to justify their action, but the fact remains that the impugned order, Annexure 8 dated 29.4.2011 was served on the petitioner for the first time when he raised objection in the certificate proceeding and before passing of this order, Annexure 8, on the audit objection, based on which the action was taken for recovery, neither the petitioner was noticed nor heard before effecting the aforesaid recovery. That, in itself, is a sufficient ground to quash the aforesaid notification and allow the application.

Accordingly, we allow this application and quash the order, Annexure 8 dated 29.4.2011, and grant liberty to the respondents to proceed afresh in accordance with law, if so advised.

Consequently, as the order, Annexure 8 has been quashed, all proceedings held subsequently even for recovery of the amount under Section 9 of the Bihar and Orissa Public Demand Recovery Act shall stand quashed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.2.2018
Transmission Date	