IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8511 of 2016

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M/s Riga Sugar Co. Ltd., Distillery Division, Dhanukagram, P.O. Riga, District Sitamarhi through its Senior General Manager, Uday Shankar Dwivedi son of Rishi Deo Dwivedi resident of Mishrouli, P.O. & P.S. Bhore, District - Gopalganj, Bihar.

.... Petitioner

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, Muzaffarpur.
4. The Superintendent of Excise, Muzaffarpur.

... . Respondents

With

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Civil Writ Jurisdiction Case No. 8570 of 2016

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M/s K. M. Sugar Mills Limited, a company incorporated under the provisions of the Companies Act 1956 having its registered office at 11, Moti Bhawan, Collectorganj, Kanpur (U.P.) and factory at Motinagar, Faizabad, U.P. through its Manager Raj Kishor Shukla aged 52 years, Son of Sri Badri Vishal Shukla, aged 52 years, resident of Motinagar, P.O. Motinagar, District Faizabad, U.P.

.... Petitioner

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, East Champaran, Motihari.
4. The Superintendent of Excise, Motihari.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 7423 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

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Bisheshwar Prasad, resident of Mohalla – Makhaniya Kuan, P.S. – Pirbabore, District – Patna.

.... Petitioner

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.
5. The Superintendent of Excise, Kaimur.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 12823 of 2016

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M/s Shipra Beverage Private Limited, a Company registered under the Provision of the Companies Act, 1956 having its registered office at Karmalichak, Begumpur, Patna City, District Patna through its Director Shri Vishal Kumar Son of Late Ashok Prasad resident of Company Sarai, Ward No. 08, Shanti Nagar, P.S. Chowk Bazar, District Rohtas, Sasaram

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna
2. The Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna
3. The Excise Commissioner, Bihar, Patna
4. The Joint Commissioner of Excise, Bihar, Patna
5. The Collector, Gaya
6. The Assistant Commissioner of Excise, Gaya
7. The Bihar State Beverage Corporation Limited, a Government of Bihar Undertaking, having its registered office at Eastern Wing, 1st Floor, Vidyut Bhawan - II, Jawaharlal Nehru Marg, Patna through its Managing Director
8. The Depot Manager, Bihar State Beverage Corporation Limited, Gaya
9. The Depot Manager, Bihar State Beverage Corporation Limited, Aurangabad

.... Respondents

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Appearance :

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For the Petitioners	:	Mr. Y.V. Giri, Sr. Advocate Mr. Satyabir Bharti, Advocate Mr. Alok Kumar, Advocate Mr. Sumit Kr. Jha, Advocate
For the Respondents	:	Mr. Lalit Kishore, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 11-07-2018

These four writ applications have been preferred for issuance of a writ of mandamus directing the respondents to refund to the petitioner(s) the proportionate amount of license fee calculated at the rate of Re. 1.00 L.P. Litre on the Minimum Guarantee Quantity (in short the 'MGQ') of country liquor. The petitioners have also prayed for a direction to pay the differential amount calculated on the MGQ of country liquor for the different periods during which the petitioner (claims) to have suffered unlawful closure of its/their manufacturing and bottling plant. Since the issues involved in all the four cases are common and based on identical contentions of the parties, as prayed for on behalf of the petitioner(s) and consented on behalf of the State, all the writ applications have been heard together for the purpose of disposal.

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2. Before we proceed to consider the grievances of the petitioner(s), it would be just and proper to take note of the individual facts of the four writ applications herein.

(1) C.W.J.C. No. 8511/2016

3. It is the case of the petitioner that pursuant to a tender notice dated 31st January 2014 inviting applications for grant of exclusive privilege for manufacture and supply of country liquors in PET bottles published by the Department of Excise and Prohibition, Govt. of Bihar, the petitioner participated in the tender for award of the exclusive privilege and after undergoing of the process of the tender the petitioner was awarded exclusive privilege by order dated 04.03.2014 for Zone-11 constituting the districts of Muzaffarpur, Sitamarhi and Sheohar for the period 01.04.2014 to 31.03.2019 at the rate of Rs. 4.07 per 200 ML PET bottles. In terms of clause 4 of the letter of grant, petitioner became liable for payment of license fee and differential amount on the entire MGQ of Zone-11. Further the petitioner was required to establish PET bottles manufacturing plant at Muzaffarpur with the effective date for start of production of country liquor in PET bottles from 01.02.2015.

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4. It is not in dispute that the petitioner, as per the requirement of tender notice and the order of grant, established a manufacturing plant but on 13.12.2015 vide annexure-4 to the writ application, the Superintendent of Excise, Muzaffarpur sealed the manufacturing premises of the petitioner on the allegation of non-supply of country liquor as per demand. It is stated that the license of the petitioner was neither suspended nor cancelled.

5. The petitioner challenged the action of the Superintendent of Excise, Muzaffarpur in C.W.J.C. No. 1364/2016 before this court. The writ application was filed on 11th January 2016 and on urgent motion the matter was fixed on 20th January 2016. The case was finally heard on 25th of January 2016 by Hon'ble Division Bench of this court and after hearing the court was pleased to pass final order quashing the order dated 13th December 2015, holding that the sealing of the premises was without authority of law as no proceeding was drawn against the petitioner before passing of the impugned order dated 13.12.2015. The consequential order was issued by this court to unseal forthwith the premises and the petitioner was allowed to carry on his business. A copy of the order passed

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in C.W.J.C. No. 1364/2016 has been brought on the record by way of Annexure-8 to the writ application.

6. It is stated that on 25th January 2016 itself at 5.00 p.m. the petitioner received a registered letter issued under the signature of the Excise Commissioner which was dated 20th January 2016 by which petitioner was informed that in view of the earlier irregularities of manufacture of substandard liquor, for which penalty had already been imposed by order dated 07.08.2015 and 24.11.2015 under Section 42(g)(h)(ii) of the Excise Act, the license of the petitioner has been suspended for a period of 90 days. It is submitted that the Excise Commissioner was totally aware of the proceedings initiated by the petitioner in the writ court at the directions issued by the Hon'ble Court earlier on 22nd January 2016 whereunder the records of the case were called for by the Hon'ble High Court, he suppressed and did not bring this fact to the notice of the Hon'ble court that on 20th January 2016 he had taken a decision to suspend the license of the petitioner for a period of 90 days. On the strength of the impugned order dated 20th January 2016 passed by the Excise Commissioner, suspending the petitioner's license, the Superintendent of

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Excise, Muzaffarpur refused to unseal the premises and issued a fresh order dated 30.01.2016 as contained in Annexure-10 to the writ application.

7. The petitioner again moved this court in C.W.J.C. No. 2380/2016 seeking quashing of the impugned order dated 20.01.2016 and also for refund of the license fee and differential amount calculated on the MGQ for the period of unlawful closure. During pendency of the said writ application, the Excise Commissioner, Bihar vide his order dated 04.02.2016 revoked his order dated 20.01.2016 and direction was issued to remove the seal of the manufacturing premises of the petitioner accordingly, the seal from the manufacturing premises of the petitioner was removed. In these circumstances C.W.J.C. No. 2380/2016 was disposed of vide order dated 08.02.2016 recording the reasons as aforesaid with liberty granted to the petitioner to approach the court with appropriate application, in future. It is in these conditions that the petitioner, after disposal of the writ application filed an application before the Collector, Muzaffarpur for refund of the license fee and the differential amount for a total period of 55 days i.e. from 13.12.2015 to 04.02.2016 but no action for refund of the amount has been

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take by the authorities, hence the present writ application has been preferred.

8. A counter affidavit has been filed by the Excise Superintendent, Muzaffarpur in which he has supported his action taken in the matter of sealing of the premises for the alleged non-supply of country liquor as per the demand of the petitioners. It is alleged therein that the petitioner had failed to comply with the departmental instructions issued from time to time. In the counter affidavit filed by a Special Superintendent of Excise (Headquarter), it is stated that in terms of the tender notice the petitioner was required to obtain license in Excise Form No. 27 from the licensing authority of the concerned district and to start manufacture and wholesale supply of country liquor in PET bottles in the concerned districts through Bihar State Beverage Corporation (in short 'BSBCL') from 01.04.2016, but the petitioner did not obtain license for the financial year 2014-15 within the stipulated time and for one reason or another the petitioner failed to start manufacture and wholesale supply of country liquor in PET bottles from the stipulated date as per contract. It is further stated that the petitioner had obtained license in Excise Form No. 27 from the

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Collector, Muzaffarpur from 01.02.2015 to 31.03.2015 and thereafter he was engaged in manufacture and supply of country liquor in PET bottles within the concerned districts through BSBCL from February 2015 till the end of financial year 2015-16 (till 31.03.2016).

9. The counter affidavit of Special Excise Superintendent further points out that the Government of Bihar notified its new Excise Policy vide Notification No. 3893 dated 21.12.2015 (Published in Bihar Gazette Extraordinary bearing No. 1342 dated 21.12.2015), the main object of which was to bring about total prohibition with respect of liquor in the State. In terms of the same, the Department vide circular no. 501 dated 03.02.2016 issued guidelines to all Collectors of the districts for effective implementation of the new Excise Policy. The same was reiterated vide circular no. 1216 dated 16.03.2016 as annexed vide Annexure-A & B to the counter affidavit. It is further stated that the State legislature enacted the Bihar Excise (Amendment) Act, 2016 amending Bihar Excise Act, 1915, it was published in Bihar Gazette (Extraordinary) bearing no. 258 dated 31.03.2016 and came into force at once. Vide Section 6(i) of the amending Act 2016, Section 19(4)(b) of

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1915 Act was deleted and vide Section 6(ii) thereof Section 19(4) provided that *"notwithstanding anything contained in this Act and the NDPS Act, 1985 the State Government, by notification, absolutely prohibit the manufacture, bottling distribution, sale, possession or consumption by any manufactory, bottling plant, license holder or any person in the whole State of Bihar or in any specified local area in respect of or all or any of the intoxicants either totally or subject to such condition as it may provide."*

10. The counter affidavit further narrates that in exercise of powers under Section 19(4) of Bihar Excise Act, 1915 (as amended by Amendment Act 2016) the State Government in the Department of Registration, Excise and Prohibition issued notification no. 1391 dated 31.03.2016 (published in Bihar Gazette Extraordinary No. 258 dated 31.03.2016) imposing absolute ban on manufacture, bottling, distribution, sale, purchase, possession and consumption of country liquor in the whole of the State of Bihar w.e.f. 01.04.2016. For effective implementation of the new Excise Policy, further guidelines were issued vide resolution dated 27th January 2016 published in Bihar Gazette on 4th February 2016 (Annexure-B to the

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counter affidavit). In terms of the said notification it was clearly stipulated that in view of the ban on sale/manufacture/consumption of country liquor with effect from 01.04.2016, the remaining stocks of country liquor available at the manufacturing premises, BSBCL Godowns and retails shops shall be destroyed after sale hour of 31.03.2016. In view of this decision, the remaining stocks of country liquor available in the various godowns of BSBCL in the State and in the manufacturing premises of various manufacturers including the petitioners and retailers were destroyed after sale hour of 31.03.2016 in presence of the concerned authorities of the department.

11. The claim of the petitioner for refund has been contested submitting that in the Notice Inviting Tender (NIT) itself vide condition no. 22, it was clearly stipulated that the Government reserves its right to stop supply of country liquor in accordance with Liquor Prohibition policy or for any special reason and for that the licensee will not be entitled to get any compensation. It is stated, the new excise policy, 2015 was brought in discharge of the constitutional obligation of the State under Article 47 of the Constitution and the intention of

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the government to do so was declared in the month of December 2015 itself that the State was moving towards total prohibition. It is submitted that the petitioner is manufacturer of the country made liquor and was thus clearly aware of the fact that there will be complete prohibition of country made liquor with effect from 01.04.2016 and the remaining stocks of country made liquor will be destroyed after sale hour of 31.03.2016 in terms of clause 4(i) of the notification dated 04.02.2016.

12. It is further stated in the counter affidavit that in view of the new Excise Policy, 2015 the license of the petitioner in Excise Form No. 27 for wholesale supply of country liquor was not renewed after 31.03.2016. While admitting the grant in question was for a period of five years i.e. from 01.04.2014 to 31.03.2019, the respondent no. 9 points out condition no. 22 of the Notice Inviting Tender wherein, according to him, it has been made clear that the government reserves its right that in accordance with the legal prohibition policy the government shall stop supply of liquor for which the licensee shall not be entitled to get any compensation. It is stated and submitted that in view of the prohibition policy the

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grant in question became inoperative after 31.03.2016, and thus the license of the petitioner in Excise Form No. 27 for wholesale supply of country liquor was not renewed after 31.03.2016. The claim of the petitioner has thus been contested mainly on the strength of condition no. 22 incorporated in the tender notice which talks of 'non-payment of compensation'.

13. It appears that during pendency of the writ application the respondents were looking for encashment of the bank guarantee submitted by the petitioner, for recovery of an amount of Rs. 72,85,790/- against demand of differential amount and the petitioner moved this court vide I.A. No. 5509/2017 seeking an order of restraint against the encashment of bank guarantee. This court vide its order dated 02.08.2017 directed that further action in pursuance of the order dated 31.07.2017 shall be kept in abeyance till next date, the interim order was continued thereafter. The Superintendent of Excise, Muzaffarpur has filed a counter affidavit to the Interlocutory Application wherein he has stated that the petitioner is a defaulter in payment of requisite amount of differential money between the base rate and tender rate, therefore, it was rightly decided to adjust the due amount of Rs. 72,85,790/- out of the

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bank guarantee of Rs. 1 crore deposited by the petitioner, and, accordingly, the bank was requested to send draft of Rs. 72,85,790/-. It is submitted that the petitioner is under a contractual obligation to deposit the differential amount between the base rate and tender rate within the stipulated period.

(ii) C.W.J.C. No. 8570/2016

14. In this case the petitioner is seeking refund of the differential amount recovered for the period from 22.02.2016 to 31.03.2016 during which the petitioner has allegedly suffered unlawful closure of its premises for manufacture and supply of country liquor. The petitioner has also prayed for refund of license fee recovered for the aforesaid period, the advance excise duty and the cost of raw materials and finished products which had to be destroyed ultimately on 31.03.2016. A detail calculation has been made at Annexure-20 of the writ application.

15. The petitioner was admittedly awarded exclusive privilege and consequential license for manufacture and supply of country liquor in PET bottles for the East Champaran and West Champaran Zone (Zone-10). He has

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brought on record Annexure-2 dated 04.03.2014 in support of his contention. On 07.08.2015 (Annexure-11 to the writ application), a penalty of Rs. 4,51,84,493/- was imposed on the petitioner on the allegation that the strength of liquors being supplied by the petitioner was not at the specified norms. The petitioner moved before the court of Member, Board of Revenue, Government of Bihar vide case no. 41/2015 wherein on 04.09.2015 a direction was issued to the respondents to file their reply. The reply was filed on 25.01.2016 but during pendency of the appeal on the oral direction of the Principal Secretary, Department of Excise, Govt. of Bihar the premises of the petitioner was sealed on the pretext of the failure of the petitioner to pay the penalty. On 03.03.2016, the Member, Board of Revenue, stayed the order dated 22.02.2016 during pendency of the appeal. On 04.03.2016 vide Annexure-14 to the writ application the petitioner filed an application before the respondents authorities with a request to unseal the manufacturing premises but the request of the petitioner was not accepted and the order passed by the Board of Revenue was not complied with. Instead of complying with the order, the Excise Commissioner vide Annexure-19 to the writ application

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passed an order directing that unless the petitioner deposits the amount, the premises shall not be unsealed. It is the case of the petitioner that a licensed premises under the Excise Act can be sealed only upon suspension or cancellation of the license, admittedly in the present case the license of the petitioner during the period in question was active and had not been suspended or cancelled. The petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of **Dabur India Limited vs. State of U.P.** since reported in **1994 SCC 113** to submit that the government of course is entitled to enforce payment and take all legal steps for recovery of its dues but the government cannot play dirty games with the citizens of this country and force them in making payment which they are not legally obliged to make. If any money is due to the government, government should take steps but not the extra legal steps from manufacturers. It is submitted on behalf of the petitioner that the closure of the premises being totally unlawful, the petitioner would be entitled for recovery as claimed.

(iii) C.W.J.C. No. 7423/2016

16. In this case the petitioner was awarded the exclusive privilege and consequential license for manufacture

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and supply of country liquor in Rohtas Zone (Zone-4) for the period 2014-19 by order dated 13.10.2014 as contained in Annexure-2 to the writ application. The petitioner's case is that his premises were closed for the period 29.02.2016 to 04.03.2016 and from 18.03.2016 to 31.03.2016 on totally unlawful grounds. It is submitted that while suffering from unlawful closure for over two months initially from 19.12.2015 to 22.02.2016, the petitioner was compelled to deposit a sum of Rs. 1 Crore as an interim measure for opening of the manufacturing premises of the petitioner but immediately thereafter on 25.02.2016 the respondents directed the petitioner to deposit a sum of Rs. 66,56,782/- against the last installment of the differential amount. He vide his letter dated 29.02.2016 (Annexure-16) responded to the notice and submitted before the authorities that he has no liability to payment of differential amount during the said period. On 29.02.2016 itself the premises of the petitioner was sealed on oral direction of the authorities even though the license of the petitioner was not suspended or cancelled. The petitioner challenged the action of the Excise authorities by filing an application before the Board of Revenue under Section 39 of the

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Excise Act and stay of the order dated 25.02.2016. The Board of Revenue stayed the impugned order vide Annexure-17 of the writ application. The premises of the petitioner was unsealed on 04.03.2016 but again on 17.03.2016 referring the certain irregularities in the matter of manufacturing operation, the Inspector of Excise sealed the premises saying that he had taken the action on the oral direction of the Principal Secretary and the Assistant Commissioner of Excise, Rohtas. The license of the petitioner was neither suspended nor cancelled. The license period expired on 31.03.2016 and the petitioner could not operate the manufacturing premises. The submission of the petitioner is that the sealing and closure of the premises of the petitioner was totally unlawful, the petitioner had suffered unlawful closure from 29.02.2016 to 04.03.2016 and from 18.03.2016 to 31.03.2016, and hence he would be entitled for refund of its deposits i.e. the differential amount and license fee for the period in question.

(iv) C.W.J.C. No. 12823/2016

17. In this case the petitioner was granted exclusive privilege and the consequential license for manufacturing and supply of country liquor in Zone-5 for the

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period 2014-19 vide order dated 04.03.2014. The petitioner's license was suspended on 02.02.2016 vide Annexure-4 to the writ application. The order of suspension was challenged by the petitioner in C.W.J.C. No. 2704/2016 before this court. During pendency of the writ application, the license of the petitioner was cancelled which was again challenged by filing an amendment application in this court. On 20.04.2016 vide Annexure-10 to the writ application, the writ application filed by the petitioner was allowed and the impugned order suspending and cancelling the petitioner's license was quashed and set aside. It is submitted that the petitioner filed his application for refund of differential amount, license fee from 02.02.2016 to 31.03.2016, excise duty paid in advance, cost of unutilized raw material and packaging material for the period and cost price of country liquor supplied to BSBCL and the quantity which was destroyed on 31.03.2016. A copy of the application dated 29.04.2016 has been brought on record as Annexure-11 to the writ application. Submission of the petitioner is that they are entitled for payments and refunds as claimed in the writ application.

18. In course of hearing, the attention of this

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court has been drawn towards the conclusive part of the judgment of the Hon'ble Division Bench in C.W.J.C. No. 2704/2016 wherein it is recorded that "the authorities have not only assumed a power not bestowed upon them, but have also clearly disregarded the provisions of the Act and have also proceeded to act in utter contravention of the principles of natural justice. The act of the respondents demonstrates that they failed to make the petitioner substantially aware of the charge, which the petitioner was facing before passing the order of suspension of license. The breach of the provisions of law have not been spelt out in the show causes notices issued to the petitioner and, without doing so, they have passed the impugned order, thus, visiting the petitioner with serious consequences and loss. We, thus, feel that such act of the respondents is not sustainable in the eye of law".

19. Learned counsel representing the petitioner submits that there is a clear finding by the Hon'ble Division Bench of this court in its judgment dated 20.04.2016 (Annexure-10 to the writ application) to the extent that due to the impugned action of the respondents the petitioner has suffered serious consequences and loss. This judgment, it is submitted

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has attained finality.

Stand of the State

20. We have taken note of the stand taken by the respondent authorities in their various counter affidavits filed in C.W.J.C. No. 8511/2016. The counter affidavits filed in all other writ applications mentioned hereinabove have similar kind of submissions as the respondents have sought to justify their action and denial of claim for refund of the license fee and the differential amount. Out of four writ applications, at least in three writ applications, there is clear finding and judgment of the competent court of law holding the action of the respondent authorities in the matter of sealing of the manufacturing premises of those petitioners as illegal, arbitrary and the courts have set aside the impugned action of the respondent authorities. In one case of Welcome Distilleries Private Limited the premises of the petitioner was lastly sealed on 17.03.2016 and the period of license expired on 31.03.2016. The petitioner has challenged the impugned action of sealing and closure of the premises and has claimed refunds accordingly.

CONSIDERATION

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21. In the case of M/s Welcome Distilleries, the total period of closure is 95 days in the manner stated in the writ petition. In paragraph-29 of the writ application a specific statement has been made that the manufacturing premises of the petitioner was again sealed on 17.03.2016 by the Inspector of Excise, Sadar stating that the Secretary, Excise and Prohibition Department has directed to seal the premises on the pretext of Inspecting the premises. In this connection, reference has been made to Annexure-19 & 19/1 to the writ application wherein, according to the petitioner conflicting stands have been taken by the Inspector, Excise, Sadar, Rohtas. In Annexure-19 while making allegations that the management is manufacturing country made liquor in PET bottles in half hearted manner, it is also stated that there are arrears of wages to the workmen and that despite directions given to the management to remove the discrepancies appearing in the manufacturing premises and to make adequate arrangement of workmen in order to maintain the supply, the management had supplied to BSBCL Sasaram and Bhabhua only 36400.0 LPL and 20800.0 LPL during the month of February 2016. According to Annexure 19 due to lesser supply by the management of this

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company, there were chances of litigations against the department at the instance of the retailers licensee who have deposited the cost price and tax for the purpose of delivery of supply. In last paragraph of his letter as contained in Annexure-19 to the writ application, the Inspector, Excise has categorically stated that on the oral direction of Assistant Commissioner, Excise, Rohtas the premises of the petitioner is being put under seal till further order. In Annexure-19/1 which is of the same date the Inspector, Excise has written to the management that on the oral direction of the Assistant Commissioner, Excise, Rohtas the bottling plant premises of the petitioner was inspected by carrying on a surprise inspection on 17.03.2016 at 11.00 A.M. to 2.00 P.M. and something wrong was found in the smell of the bottles containing the manufactured liquor by this plant. It is stated that finding a prima facie proof of indulgence in unlawful trade, as per direction of the department the plant is being sealed till further order. The petitioner thereafter represented vide his letter dated 18.03.2016 (Annexure-20 series) to the Secretary, Excise and drew his attention towards the unlawful sealing of the premises on the pretext of oral order of the Assistant Commissioner, Excise. Similar representations

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were made to the Commissioner and the Assistant Commissioner, Excise.

22. In response to the statements made in paragraph nos. 29, 30, 31, 32, 33 & 34 of the writ petition statements have been made in paragraph 31 of the counter affidavit which reads as under:

> "31. That the averments made in paragraphs 26 to 34 of the writ petition are matters of record and require no comment except the facts stated in the preceding paragraphs."

23. It is apparent from the pleadings available on the record of this case that the statement of the petitioner that he had deposited Rs. 1 Crore under protest on 21.02.2016 but the Assistant Commissioner of Excise unlawfully sealed the premises on 29.02.2016 against which the petitioner had represented before the Excise Commissioner, Bihar on 29.02.2016, but no action was being taken, has remained uncontroverted and uncontested. Similarly the statements made in paragraph-26A of the writ application stating that being aggrieved by the order dated 25.02.2016 (demand notice) in pursuance of which the manufacturing premises of the petitioner was unlawfully sealed on 29.02.2016 on the

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allegation of non-payment of the dues of the differential amount, without any order of suspension of the license and without any show cause notice, the petitioner had moved before the Board of Revenue, Bihar and the impugned order was stayed to the extent of the demand which has remained unpaid and disputed and only thereafter the manufacturing premises of the petitioner was unsealed on 04.03.2016, have also remained uncontroverted.

24. Further statement of the petitioner in paragraph-29 of the writ application and the statement that due to unlawful sealing certain number of tankers containing rectified spirit grade-1 which were brought to the factory on permit issued by the Excise authorities could not be unloaded and the same was returned to the concerned factory by the Excise Department but the petitioner has not been paid the value of the aforesaid quantity of rectified spirit Grade-1 to which the petitioner is entitled to are also not specifically controverted in the counter affidavit.

25. One thing is admitted that prior to sealing of the premises on various occasions the license of the petitioner was neither suspended nor cancelled by the authorities of the

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Excise Department, on one occasion when the Excise Commissioner passed an order dated 20.01.2016 (Annexure-11) suspending the license of the petitioner for a period of 90 days which was beyond the actual period of license of the petitioner, the Board of Revenue was pleased to grant interim stay of the order dated 20.01.2016 and it was directed that the petitioner shall be permitted to operate its licensed premises. Despite the order of stay when the petitioner filed an application on 02.02.2016 before the Excise Commissioner for unsealing of the manufacturing premises, the premises was not unsealed rather a review application was filed by the Excise Commissioner before the Board of Revenue which was ultimately dismissed by order dated 16.02.2016 (Annexure-13 & 13/1). It is only thereafter the premises of the petitioner was unsealed on 19.02.2016.

26. Learned counsel for the petitioner has submitted that the license of the petitioner was suspended without any authority of law because the Excise Commissioner is not the authority who had granted the license, therefore he was totally incompetent to pass the said order. It is submitted that under Section 42 of the Excise Act, suspension of license is

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in the form of punishment and therefore prior to suspending the license, compliance with the principles of natural justice by issuance of show cause is a must. In the present case the order of suspension was passed without show cause notice to the petitioner by the Excise Commissioner. The petitioner has relied upon a number of judgments of this court as contained in Annexure-14 series of the writ application.

27. In order to consider this plea of the petitioner when we revert to the statements made in paragraph-28 & 29 of the counter affidavit, we find that regarding statements made in paragraph 3 to 22 of the writ petition, it is stated that those are matters of record and require no comment except the facts stated in the preceding paragraphs. A vague statement has been made that the premises of the petitioner was sealed on some occasions in accordance with the rules and there was nothing wrong in it. It is also stated in the counter affidavit but without any documentary evidence in support thereof that a reasonable opportunity was granted to the petitioner to have its say in the matter and thus there is no question of violation of principles of natural justice.

28. Considering the pleadings available on the

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record, we find that in the case of M/s Welcome Distilleries also the premises of the petitioner was sealed on different occasions as stated in the writ application without affording the petitioner a reasonable opportunity to show cause. There is no denial of the statement of the petitioner that the order of suspension was passed without show cause notice to the petitioner by the Excise Commissioner and that the Excise Commissioner was not competent in law to pass such order of suspension. The various judgments of this court as contained in Annexure-14 series are there to support the contention of the petitioner.

29. We are, therefore, of the view that the prayer made by the petitioner to hold and declare that the repeated sealing and closure of the licensed premises of the petitioner for a total period of 95 days is wholly without any authority in law, and therefore has no liability for payment of the differential amount and license fee for the period of unlawful and illegal closure is fit to succeed and be allowed, and we do so accordingly.

30. In the aforesaid view of the matter now in all the four writ applications there are adjudications to the effect that the sealing of the manufacturing premises of these four

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writ petitioners were wholly unjust and improper as also that the respondents have made themselves liable to refund the license fee and the differential amount as prayed for by the petitioner. Petitioners have relied upon the judgment of the Hon'ble Supreme Court in the case of **Dabur India Limited Vs. State of U.P.** reported in **(1990) 4 SCC 113**, **Centre for Public Interest Litigation and Others Vs. Union of India and Anr.** reported in **(2013) 10 SCC 270, M/s Sheo Narayan Jaiswal Pvt. Ltd. & Ors. and M/s Ellen Breweries & Distilleries Pvt. Ltd. & Anr. Vs. The State of Bihar (in both)** reported in **BBCJ 1996 page 469** in which a Division Bench of this Hon'ble Court has held that the State and its authorities and officers cannot demand a license fee in excess of the proportionate license fee payable by the grantees and in the facts and circumstances of the case a direction was issued to refund the excess amount of license fee deposited by the petitioner(s) in those cases for the period between July 1995 to March 1996. Further reliance has been placed on another judgment of Hon'ble Division Bench of this Court in the case of **Baleshwar Prasad Vs. State of Bihar** reported in **2011 (1) PLJR 121,** wherein this court held that the petitioner would be entitled for remission of license fee for the

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period for which the liquor shop would not be run because the petitioner's license was cancelled by the Collector for a given period when the petitioner had sought some time for construction of shop at new premises and later on the license was granted. This court held that for the period when the petitioner was not running the shop, he cannot be saddled with the license fee.

31. As we have already held that in all these cases during the recorded period the petitioner(s) were not allowed to run their manufacturing units/bottling plants/breweries due to unlawful sealing of the manufacturing premises, as a consequence thereof following the various judgments cited at the bar, we are constraint to take a view that the State is liable to suffer for the wrongs committed by its functionaries i.e. the officials of the Department of Excise, Government of Bihar in unlawfully sealing the manufacturing premises of the petitioner(s) from time to time.

32. We, therefore, direct the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar and the Excise Commissioner, Government of Bihar, to consider the quantum of the license fee and the excess

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differential amount recovered from the petitioner(s) in all these cases for the period their premises remained unlawfully sealed/closed and refund the entire excess amount to the petitioner(s) within a period of three months from the date of receipt/production of a copy of this orders.

33. As regards the claim of the petitioner(s) for compensation to the extent of the value of the finished foods and raw materials including packing materials which according to them could not be liquidated by 31.03.2016 due to unlawful closure of manufacturing premises, we further direct the aforesaid authorities to consider the claim of the petitioner(s), examine the materials which may be brought before them by the petitioner(s) and take a decision with respect to their claim for compensation in accordance with law within a period of six months from the date of receipt/production of a copy of this order. In case the petitioner(s) do not feel satisfied with the decision of the competent authority as regards the claim of the petitioner(s) for refund of license fee, differential amount or compensation, it will be open for the petitioner(s) to seek their remedy before a competent court/forum in accordance with law.

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34. These writ applications and the Interlocutory Application are thus allowed to the extent indicated hereinabove.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

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