HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 50 of 2015

State of Chhattisgarh through the Collector Excise, Janjgir District Janjgir Champa C.G. , Chhattisgarh **--- Petitioner**

Versus

1. M/s Bhatia Wine Merchant Pvt.Ltd., S/o Village Dhooma Via Sargaon, P.S. Sargaon, Tahsil Mungeli District Mungeli C.G. Through Its Director Amolak Singh Bhatia, S/o Late Harbansh Singh Bhatia, R/o Dayalband Bilaspur P.S. Torwa, Bilapur Distt. Bilasur C.G. , Chhattisgarh

2. The Board of Revenue C.G. Bilaspur C.G. , District : Bilaspur, Chhattisgarh **--- Respondents**

WP227 No. 53 of 2015

State of Chhattisgarh S/o through The Collector Excise, Janjgir, District Janjgir Champa, Cg, Chhattisgarh **--- Petitioner**

Versus

1. M/s Bhatia Wine Merchant Pvt.Ltd. And Anr. S/o Village Dhooma Via Sargaon, Ps Sargaon, Tahsiol Mungeli, Distt Mungeli, Cg, Through Its Director Amolak Singh Bhatia, S/o Late Shri Harbansh Singh Bhatia, R/o Dayalband, Bilaspur, Ps Torwa, District Bilaspur, Cg, Chhattisgarh

2. The Board of Revenue, Chhattisgarh, Distt Bilaspur, Cg, District : Bilaspur, Chhattisgarh **--- Respondents**

For the Petitioner/State : Mrs. Astha shukla, Panel Lawyer
For Respondent No.1 : Mr. Ghan Shyam Patel, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

06.03.2018

1. In both these petitions, common question of law and facts are involved, therefore, they are heard together and are being disposed of by this common order.

2. Respondent No.1 is a distillery having licence under the Chhattisgarh Distillery Rules, 1995 (for short, 'the rules of

1995') in Form D-1. During inspection carried out by the District Excise Officer, it was found that respondent No.1 was not maintaining the minimum stock which was required to be maintained under the licence and as such the show cause notice was issued to him for the stocks maintained at different warehouses. Subsequently the explanation was given, however, the concerned authority found that the explanation was not in terms of Rule 8(2) and thereby decided to impose the penalty on respondent No.1 on each case separately.

3. Feeling aggrieved by the order of penalty passed by the Excise Commissioner, respondent No.1 preferred appeal before the Board of Revenue and the Board of Revenue by the impugned order dated 27.09.2014 (Annexure P-1) allowed the appeal and set aside the order imposing penalty by the learned Excise Commissioner. The said orders of the Board of Revenue are under challenge before this Court in these writ petitions filed by the State Government wherein it is stated that the orders of Board of Revenue is contrary to law and the rules and are perverse.

4. Learned State Counsel would submit that the order passed by the Excise Commissioner was well merited since it was found on physical verification that the minimum quantity as required under sub-rule (4) of Rule 4 of the Rules of 1995 was not maintained and the same being the finding of fact should not have been interfered in the revision by the Board of Revenue, thereby the Board of revenue has committed a jurisdictional error and travelled beyond the jurisdiction vested in it.

5. On the other hand, counsel appearing for respondent No.1 would submit that it is not a case of the State for not maintaining the minimum stock of the liquor and it has caused revenue loss to the State. He would further submit that the order of the Board of Revenue would show that minimum deviation was pointed out for which the penalty was imposed by the Collector and the deficiency in the stock was immediately rectified. He would also submit that the supply required by the State Government has been fulfilled by the Contractor without any break, which has not caused the revenue loss.

6. I have heard learned counsel for the parties.

7. Order of the Board of Revenue would show that the finding was recorded that during the contract period of supply of liquor at any point of time the situation did not lead to a position that the contractor would not be able to supply the liquor and the supply of liquor was made according to the different demands of the different contractors. It also records that most of the time the distillery has supplied the liquor without any break but at any certain point of time, there has been a breach of rule for the reason that minimum stock was not maintained as it varied. Eventually, it was recorded that the supply was continuous and no revenue loss was caused to the State. The Revenue Board further recorded the fact that nothing has come on record to show that deliberate disobedience of the rules was committed by the Distillery.

8. The Supreme Court in the matter of ***Excel Crop Care Limited Vs. Competition Commission of India and another (2017) 8 SCC 47*** has held thus :

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of description of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

9. Therefore, in view of the finding of the Board of Revenue and the Commissioner, C.G. Excise that no loss to the exchequer was caused by the petitioner and also considering the law laid down in the case of *Excel Crop Care Limited (supra)*. particularly considering the fact that no revenue loss has been caused to the State for not maintaining the minimum stock of liquor, the order of Board of Revenue cannot be said to be illegal. Thus in view of certain finding and the principles laid down by the Supreme Court, I do not find any reason to interfere with the order dated 27.09.2014 passed by the Board of Revenue. Accordingly, the petitions are dismissed.

Sd/-
GOUTAM BHADURI
JUDGE

Rao