NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 54 of 2015

- State of Chhattisgarh Through The Collector Excise, Janjgir, District Janjgir Champa (Chhattisgarh)

---- Petitioner

Versus

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

2. The Board of Revenue, Chhattisgarh, Distt Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Adhiraj Surana, Dy. GA for the State
For Respondent No.1	:	Shri Ghanshyam Patel, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28/02/2018

1. The instant petition is against the order dated 27.09.2014 passed by the Board of Revenue, whereby the revision filed by the respondent has been admitted and order of the Commissioner, C.G. Excise dated 10.04.2012 was set aside.

2. Shri Adhiraj Surana learned Dy. Government Advocate appearing for the petitioner/State, would submit that order passed by the Excise Commissioner is in accordance with law as the respondent Company failed to maintain at the distillery i.e. minimum stock of spirit as required by the Excise Commissioner under sub-rule (4) of Rule 4 of the Rules of 1995. Therefore, the Excise Commissioner has rightly imposed penalty upon the

respondent Company.

3. 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 order of the Board of Revenue would show that minimum deviation was pointed 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.

4. I have heard learned counsel for the parties.

5. 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 demand of the different contractor. 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. 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.

6. 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."

7. 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 the Board of Revenue cannot be said to be illegal. Thus, in view of the certain finding and the principles laid down by the Supreme Court, I do not find any reason to interfere with the order. Accordingly, the petition is dismissed.

Sd/-
Goutam Bhaduri
Judge

Ashu