IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3584 of 2019

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1. Salson Liquors Private Limited, a registered company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Binoshiba House, Fraser Road, P.S. Kotwali Patna, Bihar-800001 through its Director Shri Deepak Kumar, son of Shri Shankar Prasad, resident of Bankipur Fatua, P.S. Fatua, District-Patna-803201.

... ... Petitioner/s

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 Assistant Commissioner of Excise, Patna.
4. The Bihar State Beverage Corporation Limited, a Government of Bihar Enterprises, through its Managing Director, at 1st Floor, Vidyut Bhawan-II, Jawaharlal Nehu Marg, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harsh Singh, Adv.
Mr. Kamal Kishor Singh, Adv.

For the Respondent/s : Mr. Vishwa Vibhuti Kumar Singh, AC to AG

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 13-05-2019

Heard Mr. Harsh Singh, learned counsel appearing for the petitioner and Mr. Vishwa Vibhuti Kumar Singh, learned Assisting Counsel to Advocate General for the State.

The petitioner prays for the following reliefs:

(i) Issuance of a writ of mandamus or any other writ, order or direction, directing the respondents, to refund the (a) Excise Duty, (b) Bottling fee and (c) Distributor's License fee deposited on India Made Foreign Liquor (in short 'IMFL') manufactured and supplied by the petitioner to the Bihar State

Beverage Corporation Limited (in short' BSBCL') which remained unsold and had to be destroyed and drained out by BSBCL or returned back to the petitioner for sale outside the State of Bihar, due to prohibition on sale and consumption of liquor being imposed from 5th April, 2016;

(ii) Direct the respondents to pay interest @ 18% per annum from the date of its deposit till the date of actual refund, on the aforesaid refundable amount which has been unlawfully withheld by the respondents;

(iii) Issuance of any other writ(s), order(s), or direction(s) as may be deemed fit and proper by this Hon'ble Court.

In the nature of the order that we propose to pass, we do not intend to enter into the inter-party merits because we are certain that this matter needs to be first examined by the Excise Commissioner on the issue of refund of dues which are pending with the Excise Department and enables the petitioner to seek refund because the Bihar Excise Act, 1915 (hereinafter referred to as the 'Act of 1915') got repealed by the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act of 2016') bringing prohibition within the State, effective from 2nd of October, 2016 but substantively the trade in liquor came to a stand still with effect from 05.04.2016 by virtue of the notification issued under the 'Act of 1915'. The refund claims relate to the period 2015-16 and 2016-17 and as we have noted above since it is barely 5 days of the onset of the Financial Year 2016-17, that the 'Act of 2016' came in force in the

State and resultantly the Excise licenses remained paper transaction and the deposits became unjust realisation.

We have already examined this issue raised herein in another set of cases and expressed ourselves in the judgment rendered by us in a matter arising from CWJC No. **15316 of 2017 (United Spirits Limited Vs The State of Bihar)** which was heard analogous with other cases. We have exhaustively dealt with the similar issue as canvassed by the learned counsel appearing for the petitioner as opposed by learned Assisting Counsel to Advocate General appearing on behalf of the State.

Mr. Harsh Singh, learned counsel appearing for the petitioner submits that while the judgment passed in the case of **United Spirits Limited** (supra) dealt with the dues arising under the Value Added Tax Act, 2005, in so far as the case in hand is concerned it is arising from the deposits made under the 'Act of 1915'. We do not think that Mr. Singh is correct on his submissions because the batch of cases heard along with **United Spirits Limited** (supra) not only raised claims under the Value Added Tax Act, 2005 but also sought refund of levies made under the 'Act of 2015'.

It is bearing note of our expression present in our judgment rendered in the case of **United Spirits Limited** (supra) that we directed the petitioner to place on record, the deposits made under the 'Act of 1915' which yet remains pending with the Excise

Department for refund while also mentioning the deposits/fees which have been refunded in the meanwhile i.e. during the pendency of the writ petition.

It is in compliance of our direction that the petitioner through his counsel Mr. Harsh Singh has filed a supplementary affidavit and we are persuaded to reproduce the chart present below paragraph 5 which deals with the dues for the period 2015-16 and 2016-17 which is inclusive of the amount which have been refunded. In our opinion, this would only simplify the disposal of the matter because in so far as the issue of refund is concerned as we have noted above it stands discussed in the judgment rendered by us in the case **United Spirit Limited** (supra)**:**

2015-16

Particulars	Amount Claimed (Rs.)	Amount Refunded (Rs.)	Balance Payable (Rs.)
Excise duty deposited on stocks lying at BSBCL which has been drained out	64,82,358.45	Nil	64,82,358.45
Excise duty deposited on returned stocks	11,53,24,173.90	Nil	11,53,24,173.90
Bottling fee on stocks which has been drained out	2,19,078.00	Nil	2,19,078.00
Distributor's License fee on drained out and returned stocks for exports.	31,35,773.25		31,35,773.25
Total	**Rs. 12,51,61,383.60**	**Nil**	**Rs. 12,51,61,383.60**

2016-17

Particulars	Amount Claimed (Rs.)	Amount Refunded (Rs.)	Balance Payable (Rs.)
Advance Bottling Fee	22,00,000.00	Nil	22,00,000
Advance Distributor's License fee	15,00,000.00	14,79,452.00	20,548.00
Advance Label Registration Fee	6,00,000.00	5,91,781.00	8,219.00
Total	**43,00,000.00**	**20,71,233.00**	**22,28,767.00**

Though the counsel appearing for the contesting parties endeavor to address the Court on the merits of the case but since the Excise Commissioner is yet to record his view on the refund claim, we deem it proper to direct the Excise Commissioner, Bihar to examine the claim of the petitioner as it remains yet pending and pass appropriate orders in accordance with law adjudicating on the claim with due opportunity of hearing to the petitioner and dispose of the same by speaking order to be passed within the period of three months from the date of receipt/production a copy of this judgment.

With the direction above, we allow this writ petition.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Anjula/skpathak

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.06.2019
Transmission Date	NA