**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.15316 of 2017**

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United Spirits Limited, a public limited company having its registered office at UB Tower, 24, Vital Mallya Road, Bangalore-560001 and also having its office at United Spirits Limited, At + P.O. - Hathidah, NH - 31, District - Patna (Bihar), P.S. - Hathidah, Pin Code - 803301, through its Senior Manager and authorized Signatory Mr. Punjabi Singh, son of Late Mr. Brij Nandan Singh, resident of Hemja Rampur, Dumrah, resident of At + P.O. - Hathidah, NH - 31, District - Patna (Bihar), P.S. - Hathidah, Pin Code - 803301.

... ... Petitioner/s

Versus

1. The State of Bihar. Through the Principal Secretary, Registration, Excise & Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary and Commissioner of Commercial Taxes, Bihar, Patna.
3. The Commissioner of Excise, Government of Bihar, Patna.
4. Bihar State Beverages Corporation Limited, a Government of Bihar Enterprise through its Managing Director at First Floor, Vidyut Bhawan-II, Jawaharlal Nehru Marg, Patna-800001.
5. The Deputy Commissioner, Prohibition, Excise and Registration Department, Patna.

... ... Respondent/s

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with

**Civil Writ Jurisdiction Case No. 13165 of 2018**

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Bacardi India Private Limited, a private limited company having its registered office at S-405 (LGF), Greater Kailash, Part-2, New Delhi-1100848, through its authorized signatory Mr. Sidharth Tondon, son of Sri Prem Chand Tandon, resident of H-1/1B, Model Town- 3, P.S. Model Town, Delhi- 110009.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise & Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary and Commissioner of Commercial Taxes, Bihar, Patna.
3. The Commissioner of Excise, Government of Bihar, Patna.
4. Bihar State Beverages Corporation Limited, a Government of Bihar Enterprise through its Managing Director at First Floor,Vidyut Bhawan-II, Jawaharlal Nehru Marg, Patna-800001.

... ... Respondent/s

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with

**Civil Writ Jurisdiction Case No. 16716 of 2017**

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1. Colona Blenders and Bottlers (India) Pvt. Ltd, a private limited company having its registered office at Janki Villa, Basant Vihar Colony, Boring Road, Patna-800001, through its authorized signatory, Richa Periwal, daughter of Shri Shiv Kumar Periwal resident of P- 71, Block - D, New Alipore, P.S. New Alipore, Kolkata - 700053.
2. Anusuya Blendres Pvt. Ltd., a private limited company having its registered office at Goldar Patti, Nath Nagar, Bhagalpur, Bihar through its authorized signatory Richa Periwal, daughter of Shri Shiv Kumar Periwal resident of P-71, Block - D, New Alipore, P.S. New Alipore, Kolkata - 700053.
3. Chitwan Blendera & Bottlers Pvt. Ltd., a private limited company having its registered office at Khagaul Road, Danapur-801503, Patna, Bihar through its authorized signatory Richa Periwal, daughter of Shri Shiv Kumar Periwal resident of P- 71, Block - D, New Alipore, P.S. New Alipore, Kolkata - 700053.
4. Saibya Liquors Private Ltd., a private limited company having its registered office at 91,Koat Bazar, Sitamarhi, Bihar-843302, through its authorized signatory Richa Periwal, daughter of Shri Shiv Kumar Periwal resident of P-71, Block - D, New Alipore, P.S. New Alipore, Kolkata - 700053.
5. Allied Blendres and Distillers Pvt. Ltd., a private limited company having its registered office at 394-C, Lamington Chambers, Lamington Road, Mumbai-400004 and also having its office at RDB Boulevard, K1, Block EP and GP, Sector V, Salt Lake, Kolkata - 700091 through its authorized Signatory Richa Perwal, daughter of Shri Shiv Kumar Periwal, resident of P-71, Block - D, New Alipore, P.S. New Alipore, Kolkata - 700053.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise & Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary and Commissioner of Commercial Taxes, Bihar, Patna.
3. The Commissioner of Excise, Government of Bihar, Patna.
4. Bihar State Beverages Corporation Limited, a Government of Bihar Enterprise through its Managing Director at First Floor, Vidyut Bhawan-II, Jawaharlal Nehru Marg, Patna-800001.
5. The Deputy Commissioner, Prohibition, Excise and Registration Department, Patna.

... ... Respondent/s

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with

**Civil Writ Jurisdiction Case No. 514 of 2018**

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Carlsberg India Private Limited, having registered office at 4th Floor, Rectangle No.1, Commercial Complex, D4, Saket, New Delhi - 110017 and Corporate Office at 3rd Floor, Tower A, Paras Twin Towers, Sector 54, Gurgaon 122002, Haryana through its Plant Managers Sri Alok Ranjan, son of Amarnath Singh, resident of Amrit, Miscott Area, Ramna, Muzaffarpur, P.S. Mithanpura, District Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Department of Commercial Taxes, Bihar, Patna.
3. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
4. The Excise Commissioner, Bihar, Patna.
5. The Deputy Commissioner of Excise, Distillery and Warehouse, Bihar, Patna.
6. The Bihar State Beverages Corporation Limited, a Government of Bihar undertaking, 1st Floor, Vidyut Bhawan-II, Jawahar Lal Nehru Marg, Patna 800001 represented through its Managing Director.

... ... Respondent/s

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**Appearance :**

(In Civil Writ Jurisdiction Case No. 15316 of 2017)

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr. Balbir Singh, Sr. Adv. with |
| | | Mr. Satyabir Bharti, Adv. |
| | | Mr. Aditya Mukherjee, Adv. |
| | | Mr. Alok Chandra, Adv. |
| For the Respondent-State | : | Mr. Lalit Kishore, A.G. |
| | | Mr. Vikash Kumar, SC-11 |
| | | Mr. Bishwa Bibhuti Kr. Singh, AC to AG |
| For the Respondents-BSBC | : | Mr. Girijesh Kumar, Adv. |

(In Civil Writ Jurisdiction Case No. 13165 of 2018)

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr.Satyabir Bharti, Adv. |
| For the Respondent/-State | : | Mr. Lalit Kishore, AG |
| | | Mr. Vikash Kumar, SC-11 |
| For the Respondent-BSBC | : | Mr. Girijesh Kumar, Adv. |

(In Civil Writ Jurisdiction Case No. 16716 of 2017)

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr. Satyabir Bharti, Adv. |
| For the Respondent-State | : | Mr. Lalit Kishore, AG |
| | | Mr. Vikash Kumar, SC-11 |
| For the Respondent-BSBC | : | Mr. Girijesh Kumar, Adv. |

(In Civil Writ Jurisdiction Case No. 514 of 2018)

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr. Satyabir Bharti, Adv. |
| For the Respondent-State | : | Mr. Lalit Kishore, AG |
| | | Mr. Vikash Kumar, SC-11 |
| For the Respondent-BSBC | : | Mr. Girijesh Kumar, Adv. |

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**
**and**
**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**C.A.V. JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

**Date : 30-04-2019**

The relief prayed by the petitioner(s) in each of the four writ petitions is identical for they seek appropriate direction in the nature of mandamus commanding the respondents in the Registration, Excise and Prohibition Department, Government of Bihar together with the authorities in the Commercial Tax Department, to refund the Value Added Tax ('VAT' for the sake of brevity), the Excise Duties, the Bottling fee etc. which was deposited in advance by these petitioners for the supply of India Made Foreign Liquor ('IMFL' for the sake of brevity) to the Bihar State Beverages Corporation Ltd. for the financial year 2016-17 but which supplies never got translated into sale by reason of prohibition initially signaled by the New Excise Policy, 2015 with effect from 01.04.2016, which was followed by the enforcement of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act 2016') which repealed the Bihar Excise Act, 1915 including the amending Acts promulgated thereunder from time to time.

While the claim of the petitioner in CWJC No.15316 of 2017, CWJC No.16716 of 2017 and CWJC No.514 of 2018 has been rejected vide separate order(s) passed on 16.08.2017, inter alia, in reference to the provisions of the 'Act, 2016', in so far as the petitioner in CWJC No.13165 of 2018 is concerned, he yet awaits a disposal and thus seeks a writ in the nature of mandamus to such effect.

Since each of the four writ petitions raise common grievance that they have been heard analogous and with the consent of the parties, are being disposed of at the stage of admission, by this common judgment.

For the sake of convenience I shall be referring to the representational facts as noticed in the pleadings of CWJC No.15316 of 2017 unless clarified with specific reference to the other writ petitions.

The petitioners herein are public limited companies engaged in the business of manufacture and sale of liquor and held valid licence under the repealed enactment of the Bihar Excise Act, 1915 (hereinafter referred to as the '1915 Act').

The respondent no.4, the Bihar State Beverages Corporation (hereinafter referred to as the 'Corporation') is a Government of Bihar Undertaking set up under the aegis of the Registration, Excise and Prohibition Department for the purpose of wholesale distribution of foreign liquor within the State of Bihar. Under the scheme announced by the State, all manufacturers of liquor had to supply their stocks to the respondent no.4 who in turn was vested with the responsibility of effecting supply and distribution as per the orders/permits issued.

The pleading on records show that a Liquor Sourcing Policy was issued by the respondent-Corporation which set the terms on which a manufacturing company could supply 'IMFL' in the State of Bihar. It is acting under the Liquor Sourcing Policy that the petitioners entered into an agreement for such supply with the respondent-Corporation.

On 21.12.2015 the Government of Bihar announced the New Excise Policy, 2015 which was to come into effect from 1.4.2016 whereby, the Government of Bihar showed intendment to prohibit` sale, distribution and consumption of liquor within the State of Bihar in a phased manner. Surprisingly even after announcement of the New Excise Policy on 21.12.2015, the Corporation issued a tender inviting offers for supply of Indian Made Foreign Liquor, Foreign Made Foreign Liquor, Foreign Made Foreign Wine, Beer, Low Alcoholic Beverage and wine etc., a copy of which invitation is enclosed at Annexure 5 to the writ petition.

According to the petitioner, since such tender published, was after the announcement of the New Excise

Policy, 2015 it gave an indication that the State intended to continue with the trade, in so far as ‘IMFL’ Wine. ‘FMFL and Beer were concerned for the financial year 2016-17. The petitioners with such legitimate expectation, applied for renewal of their respective licences which included bottling licence, by depositing the required fee towards licence, bottling licence fee, blending licence fee, bond licence etc. The application together with the fee deposited by the petitioners, was not only accepted by the Department of Registration, Excise and Prohibition and the Department of Commercial Taxes rather the required renewals were also issued until 02.04.2016, for the financial year 2016-17.

While on the one hand an exercise towards issuing notice inviting tender, acceptance of licence fee, grant of renewal was taking place, on the other hand, the Government of Bihar imposed an absolute ban initially, on the manufacture, bottling, distribution, sale, purchase, possession and consumption of country liquor with effect from 31.03.2016 vide gazette notification placed at Annexure 6.

The pleading on records further confirm that on the same date i.e. 31.03.2016 the Government of Bihar passed the Bihar Excise (Amendment) Act, 2016 amending amongst others, the provisions underlying section 19(4) of the Bihar Excise Act, 1915. Within a few days thereafter that by a second notification dated 05.04.2016 at Annexure 8, the Government of Bihar imposed a complete ban on wholesale/retail trade in any form of liquor as well as on consumption thereof, with immediate effect. The resultant effect of such a sudden ban was, that the stocks supplied by the respective petitioners to the respondent-Corporation could not be sold to the retailers within the State of Bihar. It is the complaint of the petitioners that the respondent-State having induced the petitioners to renewals of their excise licences by inviting tenders etc., did not even give them sufficient time to remove their stocks to other States.

Understandably, it is feeling aggrieved by such an action that the Confederation of Indian Alcoholic Beverage Companies along with the suppliers approached this Court in **CWJC No.6675 of 2016** for questioning the notification dated 05.04.2016. A Division Bench of this Court after hearing the parties, vide judgment and order passed on 30.09.2016 held the notification dated 05.04.2016 *ultra vires* the Constitution and consequently set it aside. The judgment and order of this Court is reported in **2016(4) PLJR 369.**

The judgment of this Court was pronounced on

30.09.2016 and within few days thereafter on 02.10.2016, the Government of Bihar enforced the Bihar Prohibition and Excise Act, 2016 announcing complete prohibition of liquor and other form of intoxicants, within the State of Bihar. It is in such circumstances that the petitioners filed their respective applications before the respondent-authorities in the Registration, Excise and Prohibition Department and the Commercial Taxes Department respectively for refund of the bottling fee, licence fee, labeling registration renewal fee, 'VAT' etc. Such application was filed by the petitioners some time in December, 2016 and which remained pending until it was rejected by order dated 16.08.2017 in reference to the provisions of section 23 of the 'Act 2016' except the petitioner in CWJC No.13165 of 2018. It is being aggrieved by such state of affairs that the petitioners were constrained to move this Court through the writ petitions in question.

A counter affidavit was initially filed on behalf of the authorities of the Excise and Commercial Taxes Department blaming the petitioners of not filing appropriate application(s) for refund of 'VAT' etc. in reference to sections 68 to 71 of the Value Added Tax Act, 2005.

Two of the writ petitions bearing CWJC No.15316 of

2017 and CWJC No.16716 of 2017 came up for consideration on 12.04.2018 when a Division Bench of this Court presided by Hon'ble the Chief Justice passed the following orders:

> "The State Government has filed counter affidavit but learned Advocate General wants further time to bring on record additional affidavit with regard to the issue in question.
>
> Having heard learned counsel for the parties, we grant four weeks' time to the State Government to file additional counter affidavit but at the same time direct the State Government to call the petitioners, give them an opportunity to produce documents and other material in support of their contentions for the years 2015-16 and 2016-17 both with regard to payment of VAT and Excise Duty and other statutory dues and take a decision after hearing them and submit an affidavit to this Court by the next date
>
> List the matter on 15th of May, 2018. It is directed that the affidavit should be served on the petitioners at least a week before the next date of listing."

The said matters after being adjourned on some dates were heard on 19.07.2018 when the Division Bench taking note of the conduct of the authorities in the Commercial Taxes Department in trying to adjust the refund amount against the assessment orders and demand notice issued subsequently while trying to project that no refund is actually admissible, while deprecating the stand of the department in trying to avoid the refund, issued the following directions:

> "Having considered the submission, we are of the considered view that looking to the

nature of grievance made in the writ petition, we had directed the competent authority to pass an order with regard to the amount which is to be refunded to the petitioner and thereafter we would have granted them liberty to recover the tax, if any, in accordance with law i.e. after issuing notice for demand, conducting the assessment proceedings, pass an assessment order and thereafter proceed to recover in accordance with law. Instead of doing so, the officers concerned have devised a noble method. At one hand, they in a vague manner, determined the amount to be refunded to the petitioners and on the other hand conduct the assessment proceedings totally disregarding the statutory provision and in violation thereof.

We do not approve of such an attitude of the officers. Before taking action in the matter, we direct the counsel for the State to seek instructions as to how and under what circumstances this action was taken by the officer concerned and we warn them that if we are not satisfied with their explanation, we would take coercive action including the action for contempt against the officers concerned.

As a matter of last indulgence, we direct for listing of the matter on 31st of July, 2018 with a hope that the offices shall determine the question of refund to the petitioners, pass an appropriate order for refund and thereafter reserve their right to recover the tax due in accordance with law after following the due process as is contemplated under the statute.

A copy of this order be given to the counsel representing the State Government for necessary compliance.

List on 31st of July, 2018."

The matter was adjourned to 31st of July, 2018 and on which date an adjournment was asked by the learned State Counsel which was objected to by the learned counsel appearing for the petitioners and they expressed apprehension that the State Government in the garb of review may conduct assessment for the earlier year to frustrate the claim of the petitioners for refund. This Court granted 7 days time to the State Government to consider all issues but not to take any arbitrary action as regarding the assessment and even if assessment is carried out after following due process of law, it would not frustrate the claim of the petitioners for refund which had to be paid in accordance with law.

The two writ petitions referred to above, were joined by the remaining two petitions i.e. CWJC No.13165 of 2018 and CWJC No.514 of 2018, which have been heard analogous when the matter was next taken up on 10.08.2018. This Court took notice of the assurance given by the learned Advocate General regarding the exercise made by the respondents to quantify the refund which, according to him, was surely to be paid to the petitioners within six weeks next, positively. The Bench reposing trust in the assurance given by the learned Advocate General, adjourned the matter until 03.10.2018 allowing time to the respondent authorities in the Registration, Excise and Prohibition Department and the Commercial Taxes Department to make payment of the admissible refunds to the petitioners.

Undisputedly, in between this period though some refunds have been made but substantially the petitioners yet await the refund of the remaining amount.

The matter was next taken up on 03.12.2018 and when this Court taking note of the nature of contest, directed the respondents to file a composite affidavit in CWJC No.15316 of 2017, dealing with the claim advanced by the petitioners in the respective writ petitions towards the refund of Excise Duty, licence fee as well as the VAT amount etc. The affidavits were to be filed separately by the Excise Department and the Commercial Taxes Department on the respective refunds.

The matter was next taken up on 18.12.2018 and when learned counsel appearing on behalf of the petitioners informed that while the dispute continues to subsist on the issue of refund of the VAT amount as well as the Excise Duty amount, the Commercial Taxes Department had made refund of the VAT amount as claimed by the petitioner in CWJC No.514 of 2018, however, the claim of the said writ petitioner towards excise levy was yet pending.

We have heard Mr. Balbir Singh, learned senior counsel appearing for the petitioners in CWJC No.15316 of 2017 with the assistance of Mr. Satyabir Bharti and Mr. Aditya

Mukherji, Mr. Lalit Kishore learned Advocate General appearing for the State with Mr. Vikash Kumar, learned Standing Counsel No.11 and Mr. Girijesh Kumar for the Bihar State Beverages Corporation.

We at this stage do not see the requirement of expressing ourselves on the merits of the claim save and except that any objection by the respondents to make the refund of the advance deposits towards the VAT and the levies under the repealed ‘1915 Act’ and the rules framed thereunder, in absence of any transaction done by the petitioners during the financial year 2016-17 (05.04.2016 to 31.03.2017), would be violative of the Constitutional guarantee reserved for the petitioners under Article 265 of the Constitution of India which runs under:

> “Article 265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.”

Having heard learned counsel for the parties and on perusal of the records, we find that during pendency of the writ applications the claims of the petitioners except that of the petitioners in CWJC No.13165 of 2018 have been considered by the Commissioner of Excise, Government of Bihar (respondent no.3) as well as the Principal Secretary and Commissioner of Commercial Taxes, Bihar (respondent no.2). Certain payments have also been made to the petitioners by way of refunds of VAT, Form 19C licence fee, label registration fee and excise duty. The petitioners have however highlighted that the respondents have failed to refund some of the levies in its entirety. We propose to discuss the issues raised by the writ petitioners, case-wise:

**1. CWJC No.15316 of 2017**

In this writ application, while questioning the order dated 16.08.2017 of the Deputy Commissioner, Excise, the petitioner claimed refund of VAT and Excise Duty for the financial year 2015-16 and 2016-17 as existing on date of filing of the writ petition, as detailed in the rejoinder filed on 01.12.2018 and runs under:-

| **Particulars** | Amount Refundable (INR) |
|---|---|
| Payment in the form of Advance Excise Duty (i.e. the amount reflecting in the PLA Account maintained by the petitioner) | 21,17,762.65 |
| VAT paid on stocks, which were lying with the Respondent no.4 or the petitioner on 31.03.2017 (“**VAT**”) | 10,80,99,581.40 |
| Excise Duty paid on stocks lying with the Respondent no.4 or the Petitioner as on 31.03.2017 (“**Excise Duty**”) | 6,73,61,950.69 |
| Fees paid towards the renewal of the Petitioner’s labels, bottling license fees and the 19-C license fees for the financial year 2016-17 (“**Renewal Fees**”) | 48,97,355.68 |

During the intervening period, the respondent no.2, Principal Secretary cum Commissioner, Commercial Taxes, quantified the refund at Rs.7,36,06,367/- vide order dated

08.09.2018 which has been refunded to the petitioner by way of a demand draft of Rs.66270819.32 and sum of Rs.7335548 by way of adjustment. The demand draft has been handed over to the representative of the petitioner on 22.10.2018. Similarly, the respondent no.3, Commissioner, Excise has also given certain refunds to the petitioner details of which is available in the supplementary counter affidavit dated 07.12.2018 of respondent no.3 as under:-

**<u>United Spirits Ltd.</u>**

Details as per order dated 08.08.2018

| Head | 2015-16 | | | | 2016-17 | | | |
|---|---|---|---|---|---|---|---|---|
| | Deposit | Refund able | Refun ded | Balanc e (2015-16) | Deposit | Refundabl e 5+6 | Refunded | Final Balanc e |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 19C | 0 | 0 | 0 | 0 | 1100000 | 1100000 | 1084931 | 15069 |
| Lable Registra tion | 0 | 0 | 0 | 0 | 1950000 | 1950000 | 1923287 | 26713 |
| Excise Duty | 32503213 | 211762 | 0 | 211762 | 0 | 211762 | 211762 | 0 |
| Grand Total | 32503213 | 211762 | 0 | 211762 | 3050000 | 3261762 | 3219980 | 41782 |

Out of total refundable outstanding amount of Rs.32,61,762/-, the petitioner has received Rs.32,19,980/- and it is stated that a bill bearing no.103/2018-19 dated 29.08.2018 for rest amount of Rs.41,782/- has been submitted to the Treasury Mokama and the same will be soon paid.

The grievance of the petitioner is now with respect to the following levies:-

(I) **Surcharge** on VAT deposited @ 20% for the stocks lying with the petitioner or the respondent no.4 as on 31.03.2017 to the tune of Rs.1,79,00,432/-:

To substantiate his claim it is the submission of the petitioner that under the provisions of Section 3A of the Bihar VAT Act, 2005 every dealer liable to pay VAT under the Bihar VAT Act is also required to pay a surcharge on the sale of goods specified under Schedule IV of the Act. Thus, the incidence for deposit of surcharge on VAT would only arise once "sale" of goods has been completed. It is the submission of the petitioner that in the present case no 'sale' of goods has taken place from the petitioner to the respondent no.4, therefore no question of surcharge on VAT being levied, much less retained by the respondents would arise. It is contended that the respondent no. 2 has failed to act in accordance with the orders of this Court and while he has refunded a portion of the VAT paid by the petitioner on stocks with the petitioner/respondent no.4 as on 31.03.2017, he has failed to refund the surcharge paid by the petitioner on such stocks. It is submitted thus that the incidence for levy of both the above i.e. VAT as well as surcharge on VAT is the same and despite this the respondent no.2 has illegally sought to retain the surcharge on VAT paid by the petitioner. Consequently, it has been contended that any retention of surcharge paid by the petitioner is without the authority of law.

(ii) **VAT** paid at the time of imposition of prohibition. It is the case of the petitioner that the petitioner had paid VAT amounting to INR 70,01,112.95 on stocks which were in transit at the time of imposition of prohibition in the State of Bihar. These stocks were returned by the respondent no.4 to the petitioner on or before 11.04.2016 ("Stock in Transit"). The said stock was supplied by the petitioner to the respondent no.4 against valid order for supply issued by the respondent no.4 itself. Given that such stock was returned by the respondent no.4 to the petitioner, it cannot be said that 'sale' of the stock had taken place. It is contended that that the incidence for the levy of VAT on such stock did not arise. The respondent no.2 is therefore not correct in retaining the VAT paid by the petitioner on such stocks and it is incumbent upon the respondent no.2 to refund the VAT. According to the petitioner, it is difficult to understand the logic of respondent no.2 as he has allowed the petitioner's claim for refund for the stocks that were in the possession of BSBCL, but has not allowed the claim for the stocks that were in transit and could not at all be delivered to BSBCL. The respondent no.2, it is contended, has failed to refund VAT paid on the stock in transit in arbitrary manner.

(iii) **Refund** of bottling and license fee deposited by the petitioner for the financial year 2015-16 to the tune of Rs.34,79,930/-, carry forward Licence fee for 2015-16 of Rs.3,47,335/- and Bottling and Licence fee for 2016-17 to the tune of Rs.15,00,000/-. In this regard, the petitioner has submitted that in view of Rule 106(1)(B) of the 2012 Rules and the Bihar Excise Act, a bottling and license fee of Rs.3 per LPL was payable on saleable stock of IMFL. Accordingly, the petitioner claims to have deposited the prescribed bottling and license fee for the petitioner's brands suplied by it to the respondent no.4 during the financial year 2015-16 and 2016-17. It is submitted that since the respondents have destroyed the stocks of the petitioner, they are not entitled to retain the bottling and license fee deposited for these goods. In this regard, the petitioner claims the following outstanding refunds:-

**<u>Excise Duty claimed for 2015-16</u>**

| Nature of claim | Amount claimed | Amount refunded | Comment |
|---|---|---|---|
| 19 C Fees | 13,46,851 | N.A. | N.A. |
| Bottling Fee-19B (BSBCL Stock+Factory Stock) | 2132778 | N.A. | N.A. |
| Excise Duty | 6,73,61,950 | Nil | No reason offered |

| | | | |
|---|---|---|---|
| Bottling Licence fee carried forward from 2015-16 | 3,47,335/- | Nil | No reason |

**Excise Duty 2016-17**

| Nature of Claim | Amount Claimed | Amount Refunded | Comment |
|---|---|---|---|
| 19C Fees | 11,00,000 | 10,84,931 | Balance of Rs.15,069/- to be refunded by respondent no.3 |
| Label Registration Fees | 19,50,000 | 19,23,287 | Balance of Rs.26713/- to be refunded by Respondent no.3 |
| Excise duty-PLA Balance | 21,17,762 | 21,17,762 | N.A. |

In addition to the details above the petitioner has also claimed Bottling fee for the period of 2016-17 as manifest from the rejoinder. It is one of the contentions of the petitioner that despite arriving at a finding that an amount of INR 7,36,063,67.32 is refundable to the petitioner as VAT refund for the stocks which were lying with the respondent no.4 or the petitioner as on 31.03.2017, the respondent no.2 has only refunded an amount of INR 6,62,70,819.32 to the petitioner. The respondent no.2 has deducted an amount of INR 73,35, 548/- in terms of its assessment carried out on 26.06.2018. It is contended that the adjustments made by the respondent no.2 is in violation of the orders passed by this Court as the respondent no.2 was not at liberty to retain the sum of INR 73,35,548/- and it was incumbent upon it to refund the entire amount of INR 7,36,063,67.32.

As regards the refund of Excise Duty to the extent of claim of INR 6,73,61,950/- paid on stocks lying with the respondent no.4 and/or the petitioner as on 31.03.2017, it is contended that despite the orders of this Court, the respondent no.3 has not refunded any portion of the said amount to the petitioner till date. In its order dated 06.08.2018 the respondent no.3 has stated that he has refunded the unutilized excise duty for the financial year 2015-16 which according to the petitioner is misleading and incorrect.

The learned Advocate General representing the State of Bihar has in course of his argument relied upon the reasonings and rationale provided in the order dated 08.09.2018 passed by the respondent no.2, a copy of which has been brought on record as Annexure-A/1 to the supplementary counter affidavit dated 07.12.2018 filed by the respondent no.2. It is submitted that in terms of sub-section (2) of Section 68 of the Bihar VAT Act, 2005, the outstanding tax liability of an assessee is required to be adjusted out of the refunds, therefore in the present case since there was an outstanding of Rs.73,35,548/- against the petitioner for the assessment year 2015-16 and 2016-17, while processing the refund, the said amount has been adjusted in accordance with the norms.

As regards the claim of the petitioner on account of surcharge on VAT deposited @20% for the stocks lying with the petitioner or the respondent no.4 as on 31.03.2017, the learned Advocate General could not demonstrate as to why the petitioner should be deprived of the said claims. The order dated 08.09.2018 passed by the respondent no.2 is totally silent on this claim of the petitioner.

Again with regard to the claim of the petitioner on account of VAT paid on stock in transit there is neither any consideration given by the respondent no.2 nor the learned Advocate General could explain as to why the said claim of the petitioner is not paid.

As regards the claim on account of excise duty paid on stocks lying with the respondent no.4 or the petitioner as on 31.03.2017, bottling and license fee paid for the financial year 2016-17, carry forward bottling and license fee for the financial year 2015-16 and bottling and license fee for the financial year 2015-16, the learned Advocate General has relied on the order dated 06.08.2018 passed by the Excise Commissioner, Bihar as contained in Annexure-P to the supplementary counter affidavit dated 07.12.2018 filed on behalf of the respondent no.3. The relevant part of the order passed by the respondent no.3 reads as under:-

> **"Therefore the Prohibition and Excise Department provided ample opportunity to the manufacturers of IMFL/BEER to export the finished goods and raw materials outside the State of Bihar. Some of the manufacturers availed the opportunity thus provided and taken stocks back from the BSBCL Godowns and 19C and raw materials and get it exported outside the State of Bihar. The details of the stocks taken back by the manufacturers can be ascertained from table.**
>
> **Therefore, the stocks of IMFL that was not taken back from BSBCL Godowns as well as the stocks which were not exported from 19C and 19B till 31.07.2017 were destroyed in the light of the various orders passed by Hon'ble Supreme Court in I.A. Nos.61-75 of 2017 in S.L.P.© No.29749 of 2016. Moreover Section 23 of the Bihar Prohibition and Excise Act, 2016 does not allow claim for damages. Further the petitioner companies does not suffer any loss on stocks of IMFL or raw materials which were exported outside the State of Bihar so nothing remains to be refundable on such exported stocks of IMFL.**
>
> **It has been brought to the notice by Assistant Commissioner of Excise, Patna that United spirits limited, Chitwan Blenders and Bottlers Pvt. Ltd., Colona Blenders and Bottlers Ltd., Anusuya Blenders and Bottlers Pvt. Ltd. And Bacardi India Pvt. Ltd. have duly submitted the utilization certificate and have already been paid the outstanding unutilized excise duty of financial year 2015-16. However, despite several reminders Saibya Liquors Pvt. Ltd., Sitamarhi is not providing the utilization certificate for refund of outstanding unutilized**

**excise duty of financial year 2015-16. The Saibya Liquor Pvt. Ltd. is hereby directed to submit the Register of Excise Duty of Financial Year 2015-16 to the Excise Superintendent, Sitamarhi for calculation and verification of Excise Duty. On such calculation if any outstanding unutilized Excise duty remains, the Excise Superintendent, Sitamarhi is hereby directed to pay the same within 15 days.**

**Saibya Liquor Pvt. Ltd. will submit utilization certificate of excise duty of financial year 2015-16 to the Excise Department, Sitamarhi and on such submission the Excise Superintendent, Sitamarhi will refund such Excise duty, if any, within 15 days. The demand related to VAT Duty is within the purview of Commercial Tax Department, so the Petitioners can make the representation before the Commercial Tax Department for the redressal of their grievances related to VAT Duty.**

**For the aforesaid reasons, the Assistant Commissioner of Excise, Patna is directed to refund Aunsuya Blenders & bottlers pvt. Ltd. Rupees 98,369.00; to Chitwan Blenders & bottlers pvt. Ltd. Rupees 8,144.00; to Colona Blenders and Bottlers Pvt. Ltd. Rupees 14,276.00; to Bacardi (India) Pvt. Ltd. Rupees 14,357.00 and to refund United Spirits Ltd. Rupees 41,782.00 against the deposit made by them as advance with respect to 19C and label registration fee for financial year 2016-17, which have been adjusted as proportionate demand of 5 days, within 15 days. The Excise Superintendent Sitamarhi, is hereby directed to refund Rupees 175237.00 against advance of 19C fees to the Saibya liquor pvt. Ltd. Saibya liquor pvt ltd within 10 days. The Saibya liquor pvt ltd. has not deposited label registration fee for year 2016-17, so nothing remains to be refunded under this head."**

It is apparent from reading of the order passed by respondent no.3 that it nowhere considers the claim of the petitioner towards refund of excise duty paid on the stocks lying with the respondent no.4 or the petitioner as on 31.03.2017. The view taken by the respondent no.3 that the Prohibition and Excise Department provided ample opportunity to the manufacturers of IMFL/BEER to export the finished goods and raw materials outside the State of Bihar and some of the manufacturers availed the opportunity thus provided and taken stocks and raw materials back from the BSBCL Godowns and got them exported outside the State of Bihar, cannot be a reason according to us to take a view that those manufacturers of IMFL/BEER who could not export the finished goods or raw materials outside the State of Bihar during given period would not be liable for refund of the excise duty paid on the stocks. This aspect of the matter has again not been considered by the respondent no.3.

We are willing to agree with the contentions of the petitioner that claim of the petitioner to extent of INR6,73,61,950/- for the refund of excise duty paid on stocks lying with the respondent no.4 and/or the petitioner as on 31.03.2017 is required to be considered along with the other claims on account of bottling and license fee which were deposited by the petitioner. Learned counsel for the petitioner has rightly submitted that the bottling and license fee would be payable on saleable stock of IMFL and since the respondents have destroyed the stocks of the petitioner, they are not entitled to retain the bottling and license fee deposited for these goods. The outstanding claims as shown above in the table on account of excise duty, 19C fees and bottling fee for the financial year 2015-16 together with the carry forward licence fee for the said period and the balance for the period 2016-17 are thus liable to be considered by the respondent no.2.

In the light of the discussions made hereinabove, while we are not willing to interfere with the adjustment of arrears out of the refund of VAT, we leave it open for the petitioner to challenge the adjustment of refunds, in case, they succeed in challenging the assessment order. We are of the considered opinion that the respondent no.2 is required to consider the claim of the petitioner on account of surcharge on VAT and the VAT paid on stock in transit. Let these claims of the petitioner be considered by the respondent no.2 and a reasoned order thereon be passed after opportunity of hearing to the petitioner and the admitted amount be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

Similarly, we are of the view that the Excise Commissioner, Bihar (respondent no.3) would be obliged to consider the claims of the petitioner on account of excise duty paid on stocks lying with the respondent no.4 or the petitioner as on 31.03.2017 and which were not or could not be exported during the available period. The respondent no.3 shall accordingly be also obliged to consider the other claims of the petitioner on account of bottling and license fee for the financial year 2015-16, carry forward bottling and license fee for the financial year 2015-16 and the bottling and license fee for the financial year 2015-16 to the extent it has remained undecided. The respondent no.3 shall thus consider all these claims and pass a reasoned order after opportunity of hearing to the petitioner and refund the admitted amount within a period of three months from the date of receipt/production of a copy of this order. A reasoned decision thereon shall be communicated to the petitioner within the aforesaid period. It will be open for the petitioner to make submissions and produce all relevant materials which may be required for consideration of its claim before the respondent nos.2 and 3 on a date and time to be fixed by the respective respondents.

In consequence of the discussion above while the order of the Deputy Commissioner dated 16.08.2017 impugned in the writ petition is set aside, the order of the Excise Commissioner dated 06.08.2018 in Misc. Case No. 1 of 2018 stands modified to that extent.

**2. CWJC No.13165 of 2018**

In this case, the claims of the petitioner, the amount refunded and the amount currently outstanding according to the petitioner are shown hereunder in the tabular chart:-

| Particulars of refund claimed | Amount refundable | Amount Refunded | Amount currently outstanding (Difference between the amount as specified in Column(2) and Column(3) |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| VAT paid on stocks which were lying with the respondent no.4 as on 31.03.2017 ("VAT") | 87,83,295.74 | 74,20,015.07/- | 13,63,280.67/- |
| Excise Duty paid on stocks lying with the respondent no.4 or the petitioner for the financial year 2015-16 ("Excise Duty") | 83,68,245/- | Nil | 83,68,245/- |
| Bottling and License Fees paid on the stock of the petitioner's Brands lying with the Respondent No.4 or the petitioner for the financial year 2015-16 ("Bottling and License Fees") | 2,78,720.25/- | Nil | 2,78,720.25 |
| Label Registration Fees paid on stocks of the Petitioner's brands for the Financial years 2015-16<br><br>Label Registration Fees paid on stocks | 10,00,000/- | Nil | Nil |

| | | | |
|---|---|---|---|
| of the Petitioner's brands for the Financial years 2016-17 | 9.50,000/- | 9,36,986/- | 10,13,014/- |

In support of its claim it is the submission of the petitioner that the respondents are not entitled to retain VAT deposited by the petitioner for the period financial year 2015-16 and 2016-17 because the incidence for levy of the same has not arisen. It is submitted that by virtue of Section 3 of the Bihar VAT Act, 2005, every dealer shall be liable to pay VAT on sale or purchase, made by him. Thus, the incidence for payment of VAT in the present case is 'sale' of goods from the petitioner to respondent no.4. It is submitted that in the present case no "sale" of the petitioner's brands has taken place. It is one of the contentions of the petitioner that the manufacturers/suppliers of IMFL were only entitled to trade in IMFL in the State of Bihar in terms of the Liquor Sourcing Policy prevalent in the State (i.e. Liquor Sourcing Policy 2013-14). It is stated that in terms of the said policy, manufacturers/suppliers of IMFL were required to enter into an agreement with BSBCL (respondent no.4) for supplying IMFL. Under clause '6' of the said agreement it is provided that payment for the liquor delivered would be made only after disposal of liquor in the manner prescribed in the Liquor Sourcing Policy for the completion of purchase process. Accordingly, under clause '16' of the Liquor Sourcing Policy for the financial year 2013-14 issued by the respondent no.4 it is provided that “The sale shall be concluded only when the liquor is delivered to buyers by the Corporation”.

Thus, the petitioner contends that the ‘sale’ was unequivocally understood to have consummated only once liquor was delivered by the respondent no.4 to the buyers. In view of the fact that prohibition was introduced in the State of Bihar on 05.04.2016, the question of any sale taking place does not arise after that date. Accordingly, the question of levy and/or retention of VAT already deposited by the petitioner on the petitioner’s brands to the respondents does not arise. It is contended that, in its supplementary counter affidavit dated 09.08.2018 filed by the respondent no.2 in CWJC No.15316 of 2017, he has placed on record a refund assessment order for the financial year 2015-16 and 2016-17 pertaining to the refund claim of VAT made by the petitioner. The respondent no.2 has unequivocally stated that it is liable to refund the VAT deposited by the petitioner for the stocks which had destroyed as no sale has occurred. It is contended thus that in view thereof, it is the undisputed position of the respondents that the State is not entitled to retain ‘VAT’ on the stocks which were unsold as on 31.03.2016. Another submission of the petitioner is with regard to erroneous deductions made by the respondent no.2 from the VAT refundable to the petitioner. It is submitted that the claim for refund made by the petitioner was in fact for a sum of INR 87,83,295/-. In support of its claim, the petitioner had submitted several representations before the respondent no.2. Despite that, the respondent no.2 has erroneously directed a refund only to the tune of INR 74,20,015.07. There is a shortfall of INR 13,63,280.67 of VAT payable to the petitioner on stocks which were lying with respondent no.4 as on 31.03.2017. It is contended that, while passing the VAT refund order, the respondent no.2 has failed to appreciate that the value of stocks i.e. INR 87,83,295.74 has been arrived at by the petitioner from the details available on the website of the respondent no.4 itself.

It is another ground of the petitioner that the respondents are not entitled to retain excise duties deposited by the petitioner's brands, the incidence for deposit of which has not arisen in the first place. Referring to Section 27 and 28 of the Bihar and Orissa Excise Act, 1915 it is contended that the excise duty is payable on the import, export, transport or manufacture of the petitioner's brands. It is stated that the petitioner manufactured IMFL in Kashipur, Uttarakhand and Nanjangud, Karnataka and exported the same to the State of Bihar for sale therein. It is submitted that when goods are imported into the State of Bihar for sale, the State can only levy excise duty on such goods once the goods are "issued for sale". Accordingly, it is submitted that there is a direct link between the levy of excise duty and the sale that is to take place. In the present case, since the stocks of the petitioner have been destroyed, there is no question of any sale taking place. Thus, it is the case of the petitioner that the State of Bihar is not entitled to retain the excise duty deposited by the petitioner on the stocks which were destroyed by it. Even otherwise, it is contended that underlying principle is that in case of export or import of liquor, excise duty is payable only in the case of and at the place of sale and/or consumption.

As regards the reliance placed by the respondents on the provision of Section 23 of the Bihar Prohibition and Excise Act, 2016 in order to reject the claim of the petitioner for refund, it is contended that the same is erroneous and misplaced inasmuch as Section 23 bars a party from claiming damages or otherwise in consequence of any refusal to renew a license or permit. It is submitted that the respondents have failed to appreciate that the petitioner was looking for refund of taxes and duties from them which cannot be retained by the respondents without the authority of law. It is the submission of the petitioner that Section 23 has no application in the facts of the present case and in case Section 23 is read to empower the State Government to retain taxes and duties without the authority of law, the same will render it ultra vires to the provisions of Article 265 of the Constitution of India.

On similar grounds as have been pleaded in CWJC No.15316 of 2017, the petitioner in this case has also contended that the respondents have erred inasmuch as they have failed to refund the bottling and license fees deposited by the petitioner for the financial year 2015-16 and they have also failed to refund the fees deposited by the petitioner for the renewal of labels of the petitioner's brands.

It is submitted that the State of Bihar had on 18.04.2016 taken a policy decision to the effect that the license holders such as the petitioner who had deposited interim VAT, license fee and excise duty which had not been utilized and further the license fee and label registration fees deposited by the petitioner license holders for the year 2016-17, would be refunded on porportionate basis. It is submitted that the respondents have acted in complete derogation of their own previous policy decisions and has failed to refund the claims of the petitioner on these counts.

Learned Advocate General representing the State of Bihar could not take any significant stand on the submissions of the petitioner. We also find from the order dated 11.09.2018 passed by the Deputy Commissioner, Commercial Taxes, a copy of which is available with the supplementary counter affidavit dated 07.12.2018 filed on behalf of the respondent no.2 that save and except the claim for refund of the VAT to the extent of Rs.8783295.74 on account of unsold stocks, no other claim of the petitioner has been considered either by the Deputy Commissioner, Commercial Taxes or the respondent no.2. In the supplementary counter affidavit filed in CWJC No.15316 of 2017, an order of the Joint Commissioner, Commercial Taxes dated 08.09.2018 has been produced on record. In yet another supplementary counter affidavit dated 07.12.2018 sworn by the Additional Commissioner, Sales Tax by way of a tabular chart only the amount quantified by the competent authority and the refund made has been shown.

We find from the records that no consideration whatsoever has been given to the various claims of the petitioner either by the respondent no.2, Principal Secretary cum Commissioner, Commercial Taxes or the respondent no.3, the Commissioner of Excise. The respondent no.3 has passed a common order dated 06.08.2018 in Misc. Appeal Case No.01 of 2018 in the light of the direction of this Court issued on 19.07.2018 while hearing these writ applications. The said common order takes note of CWJC No.15316 of 2017 and CWJC No.16716 of 2016, but in the body of the order the deposits made by the petitioner during the financial year 2015-16 and 2016-17 on account of 19C, label registration and excise duty have also been shown. There is however no consideration or reasons provided in the order for and against the claims of the petitioner.

The learned Advocate General is unable to explain the reasons for reducing the quantum of refundable amount to the petitioner against the claims on different heads for the financial year 2016-17. No reason has been assigned for not taking a decision with respect to the refund of the petitioner for the financial year 2015-16 particularly when in respect of some other petitioners the decision was taken to refund certain portion of excise duty for the period 2015-16.

In the facts and circumstances as stated above, we find that the respondent authorities have completely failed to provide any reasons for non-consideration of the claims of the petitioner for the financial year 2015-16 as also reasons for reduced payment for the period 2016-17. We, therefore direct the respondent nos.2, i.e. the Principal Secretary cum Commissioner, Commercial Taxes and respondent no.3, the Excise Commissioner to take a decision and pass a reasoned order on the respective claims of the petitioner towards refund of VAT and duties/levy/fee under the '1915 Act' and rules framed thereunder and ensure payment of admitted amount to the petitioner within a period of 3 months from the date of receipt/production of a copy of this order.

The respondent(s) Principal Secretary cum Commissioner, Commercial Taxes and the Commissioner, Excise shall give an adequate opportunity of hearing to the petitioner to support the respective claims, the concerned respondent(s) shall be obliged to consider each of the claim, headwise and dispose of the same with reasons, for and against the claims, as the case may be. The amounts found admissible be paid within the same period.

**3. CWJC No. 16716 of 2017**

There are altogether five petitioners in this writ application. The four petitioners in the present case were engaged in manufacture and sale of the brand owned by the respondent no.5. The claims of the four petitioners towards outstanding dues of VAT, amount refunded and pending refund as claimed by the petitioner nos.1 to 4 are provided hereunder in tabular chart:-

Petitioner No.1 (Colona Blenders & Bottlers Pvt. Ltd.):

| | | | Amt in Lakhs |
|---|---|---|---|
| Particulars | Amount claimed | Amount refunded | Pending refundable |
| Advance VAT for FY 13-14 | 37.42 | | 37.42 |
| VAT on stock Destroyed/Sold to other | 476.40 | 343.78 | 132.62 |

| | | | |
|---|---|---|---|
| state/Decanted | | | |
| Total | 513.82 | 343.78 | 170.04 |

Petitioner No.2(Anusuya Blenders Pvt. Ltd.)

| | | | Amt in Lakhs |
|---|---|---|---|
| Particulars | Amount claimed | Amount refunded | Pending refundable |
| VAT on stock Destroyed/Sold to other state/Decanted | 731.29 | 469.78 | 261.51 |

Petitioner No.3 (Chitwan Blenders & Bottlers Pvt. Ltd.)

| | | | Amt in Lakhs |
|---|---|---|---|
| Particulars | Amount claimed | Amount refunded | Pending refundable |
| VAT on stock Destroyed/Sold to other state/Decanted | 114.22 | 114.06 | 0.16 |

Petittioner No.4 (Saibya Liquors Pvt. Ltd)

| | | | Amt in Lakhs |
|---|---|---|---|
| Particulars | Amount claimed | Amount refunded | Pending refundable |
| VAT on stock Destroyed/Sold to other state/Decanted | 117.25 | 97.50 | 19.75 |

Similarly, these petitioner nos.1 to 4 are also seeking refund of (i) Excise Duty, (ii) Bottling fee and (iii) Distributor's license fee for the period 2015-16 which were deposited by them at the time of bottling and issue of IMFL manufactured at the petitioner's bottling plant to the BSBCL which have been according to the petitioners, have been destroyed or exported to other States due to prohibition. Detailed itemwise outstanding dues on account of excise duty on stock destroyed/sold to other

State/Decanted, bottling and license fees on stock destroyed/sold to other State/Decanted, advance excise duty for financial year 2016-17, unutilized 19C license Fees and bottling fees and advance label registration and 19C license fees for 2016-17 are provided hereunder:-

<u>Colona Blenders & Bottlers Pvt. Ltd.:</u>

| | | | Amt in Lakhs |
|---|---|---|---|
| Particulars | Amount claimed | Amount refunded | Pending refundable |
| Excise duty on stock Destroyed/Sold to other state/Decanted | 509.11 | 7.48 | 501.63 |
| Bottling/License Fees on stock Destroyed/Sold to other state/Decanted | 24.36 | - | 24.36 |
| Advance Excise Duty for FY 16-17 | 0.32 | - | 0.32 |
| Unutilized 19C Licence Fees and Bottling Fees | 9.16 | 6.43 | 2.73 |
| Advance Label Regisration and 19C Licence Fees 16-17 | 12.00 | 4.50 | 7.50 |
| Total | 554.95 | 18.41 | 536.54 |

<u>Anusuya Blenders Pvt. Ltd.:</u>

| | | | Amt in Lakhs |
|---|---|---|---|
| Particulars | Amount claimed | Amount refunded | Pending refundable |
| Excise duty on stock Destroyed/Sold to other state/Decanted | 707.02 | 0.86 | 706.16 |
| Bottling/License Fees on stock Destroyed/Sold to other state/Decanted | 39.69 | - | 39.69 |
| Advance Excise Duty for FY 16-17 | 40.01 | - | 40.01 |
| Unutilized 19C Licence Fees and Bottling Fees | 15.45 | 6.78 | 8.67 |
| Advance Label | 7.50 | 3.00 | 4.50 |

| | | | |
|---|---|---|---|
| Registration and 19C Licence Fees 16-17 | | | |
| Total | 809.67 | 10.64 | 799.03 |

## <u>Chitwan Blenders & Bottlers Pvt. Ltd.:</u>

| | | | Amt in Lakhs |
|---|---|---|---|
| Particulars | Amount claimed | Amount refunded | Pending refundable |
| Excise duty on stock Destroyed/Sold to other state/Decanted | 115.30 | 0.9 | 115.21 |
| Bottling/License Fees on stock Destroyed/Sold to other state/Decanted | 6.72 | - | 6.72 |
| Advance Excise Duty for FY 16-17 | 0.09 | - | 0.09 |
| Unutilized 19C Licence Fees and Bottling Fees | 6.42 | 2.94 | 3.48 |
| Advance Label Registration and 19C Licence Fees 16-17 | 3.00 | 3.00 | - |
| Total | 245.74 | 120.09 | 125.65 |

## <u>Saibya Liquors Pvt. Ltd.:</u>

| | | | Amt in Lakhs |
|---|---|---|---|
| Particulars | Amount claimed | Amount refunded | Pending refundable |
| Excise duty on stock Destroyed/Sold to other state/Decanted | 98.62 | - | 98.62 |
| Bottling/License Fees on stock Destroyed/Sold to other state/Decanted | 4.29 | - | 4.29 |
| Advance Excise Duty for FY 16-17 | | - | - |
| Unutilized 19C Licence Fees and Bottling Fees | 4.61 | 1.75 | 2.86 |
| Advance Label Registration and 19C Licence Fees 16-17 | 4.00 | - | 4.00 |
| Total | 111.52 | 1.75 | 109.77 |

To make grounds for the aforesaid claims, these petitioners have also raised similar grounds and arguments which have been taken note of by this Court hereinabove while dealing with the aforesaid two writ applications.

On going through the records, we find that a supplementary counter affidavit dated 07.12.2018 has been filed on behalf of the respondent no.2 i.e. the Principal Secretary cum Commissioner, Commercial Taxes. It is stated therein that in compliance of the order dated 19.07.2018/31.07.2018, the competent authorities of the Commercial Tax Department passed the necessary orders quantifying the amount of refund to the petitioner subject to assessment. The amount quantified to be paid to the petitioner vide order dated 08.08.2018 for period 2015-16 was Rs.3,43,77,707.25. Thereafter in requisite Form C-V, the refund order for adjustment assessed dues amount of Rs.2,40,47,746.00 for period 2010-11, 2011-12 and 2013-14 was passed on 28.08.2018. Accordingly, banker's cheque for Rs.10329961.00 (Rupees one crore three lakh twenty nine thousand nine hundred sixty one only) was prepared. In this manner, the total amount of Rs.3,43,77,707.25 was refunded to the petitioner no.1 by way of banker's cheque and three treasury chalan as contained in Annexure-1 series.

As regards the petitioner no.2, it is stated that for the period 2015-16, the amount quantified for refund to the petitioner was Rs.4,69,78,213.47 and the payment was made vide demand draft dated 15.09.2018 as contained in Annexure-B1 series.

The petitioner no.3 is said to have been found entitled for refund of Rs.114.06 which has been paid to him vide CTMIS report as contained in Annexure-C1 series.

Petitioner no. 4 Saibya Liquors Private Ltd. was found entitled for refund of Rs.97,49,532.55 for the period 2015-16 and the quantified amount has already been paid.

In response to the supplementary counter affidavit dated 07.12.2018 of the respondent no.2 the petitioners have filed a rejoinder in which it is stated that so far as the claim for refund of VAT paid in advance on manufacture and supply of IMFL to BSBCL which were either destroyed or exported to other States, the respondent VAT authorities though initially rejected the claim for refund on VAT but passed an order directing refund of VAT to the petitioners. It is contended that while passing the order for refund of VAT on stock which had been destroyed or had been exported to other States, the figures provided by BSBCL was only taken into consideration resulting in shortfall in refund of VAT to the petitioners on account of the fact that the BSBCL figures did not take into account stocks returned to the factory by BSBCL which had been destroyed or had been exported to other States on which VAT was paid in advance. It is submitted that the respondent VAT authorities are required to refund VAT on the stocks returned by BSBCL, which subsequently was either destroyed or exported to other States. It is submitted that the respondent Commercial Tax Department is liable to refund VAT paid in advance on such stocks.

Regarding the refund of excise levies also it is contended that the respondents have not refunded the excise duty, bottling fee and distributor's licence fee deposited on manufacture, bottling and issue of IMFL to BSBCL during the year 2015-16 or kept at the factory or were in transit to BSBCL which had to be destroyed and drained out or had been exported on account of prohibition having been imposed in the State of Bihar. The claims of the petitioners on these counts have been taken note of hereinabove in the tabular chart, hence those are not required to repeat hereunder for repetition.

In this case also, we find that no plausible reason has been provided in the supplementary counter affidavit filed on behalf of the State respondents to pay the reduced claim to the petitioners. No reason at all has been assigned for non-payment of most of the claims. In course of argument also no material could be brought before us by the learned Advocate General to demonstrate that any consideration has been given to the claims of the petitioners with reasonings and rationale.

In the circumstances, we issue similar direction to the respondent nos.2 and 3 i.e. the Principal Secretary cum Commissioner, Commercial Taxes and the Commissioner, Excise respectively as have been issued by us in preceding writ applications in CWJC Nos.15316 of 2017 and 13165 of 2018 to consider and dispose of the balance claims by a speaking order after opportunity of hearing within 3 months of receipt/production of a copy of this order. It goes without saying that the amounts found admissible be paid within the same period.

In consequence, the order of the Deputy Cm missioner, Excise dated 16.08.2017 is set aside and the order of the Excise Commissioner dated 06.08.2018 passed in Misc. Case No.1 of 2018 is modified to that extent.

**4. CWJC No.514 of 2018**

In the present case, the petitioner has raised the following claims:-

2015-16

| Particulars | Amount (Rs.) |
|---|---|
| Excise duty deposited on stocks lying at BSBCL and 19C warehouse, which has been drained out | Rs.2,57,41,609.40 |
| Bottling fee lying at BSBCL and 19C warehouse, which has been drained out | Rs.18,08,803,43 |

| | |
|---|---|
| Distributor's License Fee lying at BSBCL and 19C warehouse, which has been drained out. | Rs.35,02,876.65 |
| Total | 3,10,53,289.48 |

<u>2016-17</u>

| Sl. | Heads | Claim (Rs.) | Refunded (Rs.) | Balance |
|---|---|---|---|---|
| 1. | Advance Distributor's licence Fee-19C | 24,09,852.00 | 23,82,452.00 | 27,400.00 |
| 2. | Advance Bottling fee | 21,89,444.90 | Nil | 21,89,444.00 |
| 3. | Advance Export Fee | 7,922.00 | Nil | 7,922.00 |
| 4. | Label Registration Fee (Export) | 16,50,000.00 | Nil | 16,50,000.00 |
| 5. | Bottling licence fee-Form 20 | 5,00,000.00 | Nil | 5,00,000.00 |
| 6. | Bonded Warehouse -Form 19B | 2,00,000.00 | Nil | 2,00,000.00 |
| 7. | Brewery Licence fee Form 18 | 3,25,000.00 | Nil | 3,25,000.00 |
| | Total | | 23,82,452.00 | 48,99,766.00 |

As against the aforesaid claims of the petitioner the respondent nos.1, 3 and 5 have taken a stand that earlier the claim of the petitioner was found not acceptable in terms of the provisions made under Section 23 of the Bihar Prohibition and Excise Act, 2016 and accordingly an order dated 16.08.2017 was issued which came to be challenged in the present writ application. A copy of the order dated 16.08.2017 is available at Annexure-19 to the writ application. It is submitted that after receipt of the writ application matter was again examined by the Department and vide letter no.710 dated 28.02.2018 the Assistant Commissioner of Excise of the concerned District of Patna was directed to take necessary steps to refund the excise duty bottling fee and license fee proportionately in accordance with resolution dated 18.04.2016. It was submitted that the answering respondents were taking sincere steps towards finalizing the claim of refund of the petitioner.

A statement has been made in paragraph 16 of the supplementary counter affidavit dated 9.8.2018 that the petitioner would be required to appear before the competent authority with relevant papers in support of its claim for refund as the department has not denied to refund the excise duty to the petitioner which are due and payable to them as per rules. In the same counter affidavit, however these respondents have stated that manufacturing and bottling of IMFL/BEER were not prohibited from 05.04.2016 within the State of Bihar. The State government vide notification no.819 dated 06.10.2016 decided to give hundred percent tax holiday on export duty and bottling fees on production of IMFL and BEER within the State of Bihar. It is stated that in tune with the aforesaid policy decision, the State government vide notification no.911 dated 19.10.2016 allowed to continue the production at existing licenses of breweries and bottling in the State of Bihar. The companies enjoyed the privileges granted by the Excise Department in financial year 2015-16 without any hindrance and they were provided the opportunity to produce and export IMFL/BEER outside the State of Bihar in financial year 2016-17. Thus, it is contended that question of refund for financial year 2015-16 with respect to Form 19C licence fees, excise duty and label registration fees which have been utilized, does not arise.

It is further contended that the State government vide notification no.60 dated 24.01.2017 had taken a policy decision not to renew the existing licenses of IMFL manufacturing, bottling plants, brewery and bottling plants of brewery from financial year 2017-18, therefore, the State government provided ample opportunity to the companies for production and export the same outside the State of Bihar till 31.03.2017.

It is further submitted that the petitioner has duly submitted the utilization certificate and have already been paid the outstanding unutilized excise duty of financial year 2015-16 at the tune of Rs.1,07,95,327. Further the unutilized Form 19C licence fees of 2015-16 and advance of 2016-17 which cumulatively stands at Rupees 24,09,852/- have also been paid to the petitioner. The advance with respect to Label Registration Fee of financial year 2016-17 has also been refunded with deduction of Rs.4110, calculating the same for 5 days. However, vide memo no.2751 dated 08.08.2018 the Assistant Commissioner of Excise, Patna has been directed to refund the remaining Rs.4110 with respect to label registration fees and therefore nothing reamins to be refunded back to the petitioner.

The respondent no.2 in his supplementary counter affidavit dated 07.12.2018 has stated that the competent authorities of the Commercial Taxes Department has passed the necessary orders quantifying the amount of refund to the petitioner under the Bihar VAT Act, 2005 and the quantified amount of Rs.32382882.00 has already been refunded to the petitioner vide Annexure-A-1 and A-2 to the said affidavit.

We have taken note of the submissions of the respondent nos.1, 3 and 5 in their supplementary counter affidavit dated 09.08.2018. We find that while at the first instance they passed the impugned order dated 16.08.2017 rejecting the claim of the petitioner in terms of Section 23 of the Bihar Prohibition and Excise Act, 2016, subsequently they themselves considered the claim for refund, therefore, in our opinion the impugned order dated 16.08.2017 has been rendered redundant by the own act of the respondents. The impugned order dated 16.08.2017 as thus lost its significance and no adjudcation is required with respect to the legality and validity of the said impugned order.

We also find that on the one hand the respondent nos.1, 3 and 5 in their own supplementary counter affidavit took a plea in paragraph 16 that they are taking sincere steps for finalizing the claim of refund of the petitioner and for that the petitioner would be required to appear before the competent authority with relevant papers in support of their claims of refund, but subsequently in paragraph 20 of the supplementary counter affidavit the respondents went on to take a plea that question of refund for financial year 2015-16 with respect to 19C fees, excise duty and label registration fees which according to them have been utilized by the petitioner, does not arise. Certain reasons have been assigned for this purpose by the respondents in the affidavit but we are unable to accept those reasons and the plea of the respondents for the solitary reason that the respondents seem to have acted in haste in making statements in the affidavit without giving appropriate consideration to the claim of the petitioner after giving him an opportunity to appear and produce relevant papers in support of his claim of refund.

We find from the rejoinder filed by the petitioner that he has supported his claims towards excise duty, bottling fee and distributor's licence fees realized from the petitioner on manufacture, bottling and issue of beer from its warehouse during the year 2015-16. It is the contention of the petitioner that although he manufactured and supplied it to the BSBCL but those were in transit or stored at the brewery and had to be ultimately destroyed and drained out, therefore, the petitioner would be entitled to get a refund inasmuch as the transaction of sale was not complete.

We also find from the order dated 06.08.2018, a copy of which has been brought on record by way of Annexure-D to the supplementary counter affidavit filed on behalf of the respondent nos.1, 3 and 5 that it nowhere records that prior to passing of the order as contained in Annexure- 'D', any opportunity of hearing was given to the petitioner. In our considered opinion since the order as contained in Annexure- 'D' is said to have been passed in compliance of the order of this Court issued on 19.07.2018 in the present writ application, this Court not being satisfied with the order as contained in Annexure-D would in exercise of its power under Article 226 of the Constitution of India set aside the order dated 06.08.2018 in so far as it relates to the rejection of the claims of the petitioner under the '1915 Act' and the rules framed thereunder for refunds pertaining to the financial year 2015-16 and 2016-17 including those with respect to Form 19C licence fees, bottling fees, excise duty and label registration fee and while setting aside the order dated 06.08.2018 we would once again direct the Excise Commissioner, Bihar (respondent no.3) to consider the claims of the petitioner afresh after giving the petitioner an adequate opportunity of hearing including opportunity to produce all such materials which the petitioner can produce in support of its claims. The respondent no.3 shall thereupon pass a reasoned order by giving consideration to the submissions of the petitioner as regards each of the claim and shall complete the whole exercise including payment of admitted amount to the petitioner within a period of 3 months from the date of receipt/production of a copy of this order.

All the writ applications are allowed in terms stated hereinabove.

**(Jyoti Saran, J)**

I agree

**(Rajeev Ranjan Prasad, J.)**

**( Rajeev Ranjan Prasad, J)**

skpathak/Arvind

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|---|---|
| **AFR/NAFR** | AFR |
| **CAV DATE** | 18.12.2018 |
| **Uploading Date** | 01.05.2019 |
| **Transmission Date** | NA |