IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18064 of 2018

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Pernod Ricard India (P) Limited, a private limited company having its registered office at 5th Floor, D-3, District Centre, Saket, New Delhi-110017, through its Manager Finance cum Authorized Signatory Mr. Vikash Agarwal, son of Shri Kailash Chand Agarwal, resident of M2-203, GPL Eden Heights, Darbaripur Road, Sector 70, P.S. Badshahpur, Gurugram- 122101 (Haryana).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise & Prohibition Department, Government of Bihar, Patna.
2. The Commissioner of Excise, Government of Bihar, Patna.
3. 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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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti, Adv.
Mr. Alok Chandra, Adv.
Mr. Aditya Mukherjee, Adv.
Ms. Aparna Arun, Adv,

For the Respondent-State : Mr. Lalit Kishore, AG
Mr. Vikash Kumar, Adv.
Mr. Manaish Dhari Singh, AC to AG

For the Respondent-BSBC : Mr. Vikash Kumar, Adv.
Mr. Girjesh 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 : 01-05-2019

Heard.

The petitioner seeks a direction in the nature of mandamus commanding the respondents to refund the Excise Duty together with the fees deposited by the petitioner in advance for the period 2016-17 under the since repealed Bihar Excise Act, 1915 (hereinafter referred to as the '1915 Act') and the Rules framed thereunder for transacting business in liquor.

It is the complaint of the petitioner that these deposits remained unutilized on account of enforcement of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act of 2016') which was preceded by a notification expressing similar intent of the State to prohibit sale, purchase, consumption, transportation of all forms of liquor with effect from 05.04.2016. It is further the complaint of the petitioner that representations to such effect seeking refund of the deposits have remained pending with the respondent nos.1 and 2 and are dated 10.12.2016, 09.06.2018 and 18.06.2018. It is the complaint that since no steps were taken by the concerned authorities in the Excise Department to make refund of the Excise Duty as well as the fees paid by the petitioner that he is before this Court.

We have heard learned counsel for the parties and we have perused the records and in the nature of the order which we propose to pass we do not find it necessary to deal with the inter-party merits because the similar issues engaged this Court in a batch of cases arising from **CWJC N0.15316 of 2017 (United Spirits Limited Vs. The State of Bihar and others)** which were heard analogous with some other writ petitions. This Court bearing note of the grievance raised has directed the Excise Commissioner to consider the claims relating to refund of Excise Duty and other fees deposited by the concerned licensee and to dispose of the same in accordance with law by giving opportunity of hearing to the concerned licensee, within a period of three months of receipt/production of a copy of the judgment.

In the present case the representation at Annexure 18 deals with claim of refund because in absence of transactions the deposits remained unutilised. The details of the refund claim are as under:

Nature of Duty	**Amount (in INR crores)**
Excise Duty paid in advance	3.62
Import Fee	0.18
Bond Licence Fee	0.38
Label Registration/Renewal Fee	0.22
Security Deposit as per LSP 2016-17	0.25
Bottling Fee	0.33
Total	**4.98**

Learned counsel for the petitioner have submitted that the petitioner in addition to the refund detailed above has claimed refund towards Excise Duty, Bond Licence Fee, Bottling Fee of unsold stocks to the tune of Rs.12.06 crores lying with the Bihar State Beverages Corporation Limited and an amount of Rs.3.8462 crores towards the stocks lying in the warehouse of the company under 19C Bond which remained unsold. There are certain other claims on account of stocks lying in the Bottling Plant which could not be sold and is to the tune of Rs.0.912 crores. In all the representation claims refund of approximately Rs.21,81,40,000/- towards Excise Duty, Advance Excise Duties, Label Registration, Renewal Fees and other fees paid on stocks to be sold during the period 2016-17 but could not be sold on account of the enforcement of the prohibition law.

Having heard learned counsel for the parties and considering that the claims yet are pending disposal with the State/Corporation authorities, we are of the view that in view of the legal position settled by this Court in the case of **United Spirits Limited** (supra) on similar claims and the directions issued therein, the Excise Commissioner, Bihar/Managing Director of the Bihar State Beverage Corporation as the case may be, are under a duty to consider and dispose of the claims of the petitioner. Accordingly we issue similar direction to the respondent no.2, Commissioner of Excise and the respondent no.3, Managing Director of the Beverages Corporation to examine the grievance of the petitioner as spelt out in his representation enclosed at Annexure 18 to the writ petition and dispose of the same in accordance with law after giving opportunity of hearing within a period of three months of receipt/production of a copy of this judgment.

It goes without saying that such of the refund claim which are found admissible, be refunded within the period stipulated above and those found not admissible be disposed of by a reasoned order to be again passed within the same time.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

skpathak/-

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