IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4736 of 2018
Date of decision: 21.02.2019

M/s Lovely Enterprises

……Petitioner

Vs.

State of Punjab through Chief Secretary, Punjab Civil Secretariat, Chandigarh and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vishal Goel, Advoate for the petitioner(s).
Mr. Pankaj Gupta, Additional Advocate General, Punjab.

Ajay Kumar Mittal,J.

1. This order shall dispose of a bunch of five petitions bearing CWP Nos. 4736, 19489, 4949, 4954 and 5382 of 2018, as learned counsel for the parties are agreed that the issue involved in all these petitions is identical. However, the facts are being extracted from CWP No.4736 of 2018.

2. Prayer in CWP No.4736 of 2018 filed under Articles 226/227 of the Constitution of India is for a direction to the respondents to refund or adjust the special licence fee and other fees wrongly demanding from the petitioner or its partners for the year 2016-17. Further direction has been sought to the respondents to allow the petitioner or its partners to participate in a lottery to be held for the year 2018-19 for grant of liquor licence.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.4736 of 2018 may be noticed. The petitioner is engaged in the retail business of liquor holding the L-2/L-14A

licence under the Licensing Group Zone-E, Model Town Group, Patiala for the year 2016-17. The petitioner started functioning of liquor vends from 1.4.2016 and paid the whole requisite licence fee to the authority. The licence fee amounting to ₹6,33,02,772/- was fixed for the licensing group as a whole, as per Excise Policy for the year 2016-17 and the annual quota of PML, IMFL and Beer was fixed. According to the petitioner, the Excise department, Punjab did not issue the liquor quota of PML to it till 12.4.2016 and the same was made available from 13.4.2016. The liquor quota of IMFL and Beer was not issued till 6.4.2016 and the same was made available from 7.4.2016. Accordingly, it was liable for the refund of the amount wrongly collected from it by the department. As per calculation made in the representation, the petitioner asserts that it was entitled of refund of ₹3,11,01,965/-. According to the summons issued to the petitioner by the department, the amount due was ₹1,05,028,328/- including interest. The petitioner approached the department so many times to settle the dispute but the department failed to consider the claim of the petitioner. Some of the liquor licensees of the State of Punjab filed CWP No.102 of 2017 in this Court for issuance of direction to the respondent to refund/adjust the licence fee and other fees on account of liquor not having been supplied to them within time. The said writ petition was dismissed vide order dated 27.2.2017, Annexure P.3 with liberty to the petitioners to avail of any alternative remedy including resorting to Clause 3.19 of Punjab Excise Manual for the year 2016-17. Accordingly, the petitioner filed representation before the Excise and Taxation Commissioner, Punjab who dismissed the same vide order dated 26.12.2017 Annexure P.4 on the ground of lack of jurisdiction. Thereafter, the Excise and Taxation Commissioner issued summons to the petitioner for recovery of the amount due for special licence fee and other additional and extra fee alongwith interest. Hence the instant petitions by the petitioners.

4. We have heard learned counsel for the parties.

5. Admittedly, the petitioner started functioning of liquor vends w.e.f. 01.4.2016 and paid the whole requisite licence fee to the authority. The Excise Department, Punjab did not issue the liquor quota to the petitioner till 12.4.2016 which was made available to it from 13.4.2016. Similarly liquor quota of IMFL and Beer was made available w.e.f. 7.4.2016. Thus, the petitioner claimed refund of the amount collected from it by the department. The representation filed by the petitioner was dismissed by the Excise and Taxation Commissioner, Punjab on the ground of lack of jurisdiction, vide order dated 26.12.2017, Annexure P.4. Thereafter, summons for recovery of the amount were issued to the petitioner.

6. In view of our order passed today in CWP No.16497 of 2018 ***(M/s Lakhwinder Singh through its proprietor Mr. Lakhwinder Singh s/o Shri Khajan Singh, resident of 66, Dera Baba Jiwan Singh colony, Amritsar, Punjab vs. State of Punjab and another)***, the petitioners have alternative remedy of approaching the Excise and Taxation Commissioner in terms of Section 15(3) of the Punjab Excise Act, 1914 seeking review of the order dated 26.12.2017, Annexure P.4. Accordingly, the petitioners are relegated to the remedy of review under Section 15(3) of the Act. The petitions stand disposed of.

(Ajay Kumar Mittal)
Judge

February 21, 2019 **(Manjari Nehru Kaul)**
'gs' **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No