IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8110 of 2020

==

M/S Esveegee Breweries Pvt. Ltd. a company incorporated under the Companies Act, 1956, having its registered office at 3rd Floor, Anantra Tower, Opposite Sadar Thana, Pan Bazar, Guwahati, Assam through its authorized signatory Mr. Sujeet Kumar, Male, aged 48 years, Son of Late Mahendra Lal, resident of Village - Kalpunagar, Janakpur Manpur, P.S. Buniyadganj, Manpur, District- Gaya.

... ... Petitioner/s

Versus

1. The State Bank of India having it registered office at State Bank Bhavan, Corporate Centre, Madame Cama Road, Mumbai Maharashtra 400021 through its Managing Director.
2. The State Bank of India, SME Branch, Alankar Place, Boring Road, Patna - 800001 through its Chief Manager.
3. The Chief Manager, State Bank of India, SME Branch, Alankar Place, Boring Road, Patna 800001.
4. The Excise Commissioner, Excise and Prohibition, Government of Bihar, Patna.
5. The Assistant Commissioner of Excise, Patna, Bihar.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr.Satyabir Bharti, Adv.
For the Respondent/s : Mr.Sushil Kumar Singh, AC to AAG-10
Mr. Sanjiv Kumar, Adv.

==

CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

6 06-12-2021 Admittedly, the order dated 4.3.2016 passed by the Board of Revenue, Bihar in case no. 43 of 2015, stands in favour of the petitioner, operative part thereof reads as under:-

> "Perused the records and heard the submissions of the parties. Admittedly, the chemist report dated 19.5.2015 is the sole basis for passing of the impugned order against the petitioner. The

report reveals that samples were collected from only one shop by the Excise Officer, though large numbers of shops are licensed in the district. The relevant part of the report insofar as the petitioner is concerned, reveals that the strength was 0.6U lower. If the Excise Commissioner was of the firm view that the petitioner has deliberately indulged in manufacture of substandard liquor, then obviously the Excise Commissioner ought to have directed for further enquiries in the matter and could have directed for collection of some more samples in surprise inspections including those at the manufacturing premises. The Hon'ble Patna High Court by the aforesaid judgment has already held that the burden of proof lies on the licensing authority to prove existence of a particular fact, i.e., the fact whether the samples so collected and found to be sub-standard was supplied by the petitioner.

In view of the above said discussions, I find that the impugned order dated 7.8.2015, passed by the Excise Commissioner, Bihar cannot be sustained and is as such set aside.

In facts sand circumstances mentioned above on the basis of the discussions in the preceding paragraph, and, especially in the light of the categorical and clear cut orders of the Hon'ble High Court of judicature at Patna as mentioned above. The application is accordingly allowed."

The bank guarantee which the petitioner has furnished has by now expired, however, the original copy thereof is being retained by the State.

On a query being put to the learned counsel for the State, whether the same can be returned, he submits that the same shall be returned to the petitioner within ten days from today.

In view of the statement made by the learned counsel for the State, no further adjudication is necessary.

Thereafter, the petitioner shall be entitled to produce the Bank guarantee before the Bank, he shall also be entitled to make a representation to the Bank for return of the amount. The Bank shall consider his representation and pass a speaking order within a week.

The present writ petition stands disposed of.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

Tiwary/-Ajay/-

U			