IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8948 of 2017

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M/s Riga Sugar Co. Ltd., Distillery Division, having registered office at 14 Netaji Subhash Road, Kolkata – 700001 and having Distillery Plant at Riga, District – Sitamarhi, Bihar through its Chief General Manager, Dr. Sukhbir Singh Mallic, Son of Shri Bijpal Singh, resident of Riga Sugar Co. Ltd., Riga, Sitamarhi.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Excise and Prohibition, Government of Bihar, Patna.
2. The Principal Secretary, Excise and Prohibition, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector, Muzaffarpur.
5. The Superintendent of Excise, Muzaffarpur.
6. The Superintendent of Excise, Araria.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Ashish Giri, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-02-2021

Petitioner has prayed for the following relief(s):

> “i. To issue an appropriate writ, order, direction in the nature of certiorari for quashing the order dated 23.05.2017 passed by the Excise Commissioner, Bihar, Patna in Appeal Case No. 42 of 2015 by which the petitioner has been held guilty for supply of sub-standard liquor and has upheld the original penalty order

dated 07.08.2015 passed by the Excise Commissioner, Bihar, Patna, by which the petitioner was demanded to pay Rs.3,82,48,914/- and has accordingly dismissed the appeal which was remanded by the Member, Board of Revenue vide its order dated 22.07.2016 (Annexure-15).

ii. To issue an appropriate writ, order, direction in the nature of certiorari for quashing the order dated 07.08.2015 bearing memo no. 2451 issued by the Excise Commissioner, Bihar, Patna by which in excise of power under Section 42(1)(g)(h)(i) of the erstwhile Bihar Excise Act, 1915, a penalty of Rs.3,82,48,914/- has been imposed upon the petitioner on the allegation of manufacture and supply of sub-standard liquor (Annexure-10).

iii. To issue an appropriate writ, order, direction in the nature of certiorari for quashing the letter dated 01.06.2017 issued by the Collector, Muzaffarpur by which in terms of the order dated 23.05.2017 passed in Appeal Case No. 42 of 2015 the petitioner has been directed to deposit a sum of Rs.3,82,48,914/- (Annexure-16).

iv. To hold and declare that there has been no supply of sub-standard liquor by the petitioner during the period in question and accordingly no loss has been caused to the government and thus no penalty could have been imposed in excise of power under Section 42 of the erstwhile Bihar & Excise Act, 1915.

> v. To issue an appropriate writ, order, direction in the nature of mandamus directing the respondent authorities to permit the petitioner to operate its distillery situated at Riga without any hindrance.
> vi. To issue appropriate interim/ex-parte interim order staying the operation of the impugned order of the Excise Commissioner dated 23.05.2017 passed in Appeal Case No. 42/2015 and also the consequential order of the Collector, Muzaffarpur bearing no. 514 dated 01.06.2017 and or the deposit of the amount in question be stayed for which the authorities be prevented from taking any coercive steps for recovery of the same or otherwise against the petitioner during the pendency of the present writ application.
> Vii. To issue any other relief for which the petitioner is entitled for."

The short point which arises for consideration is as to whether the authority passing the impugned order dated 23.05.2017, in Appeal Case No. 42 of 2015, was empowered under the provisions of Bihar Excise Act, 1915 (hereinafter referred to as the Act) to pass such an order or not.

It is not in dispute that the impugned order dated 23.05.2017 was passed by Excise Commissioner, Bihar, Patna in Appeal Case No. 42 of 2015 (Annexure-15). Also, it is not in dispute that under the Statute, i.e. Section 42 of the Act, the authority prescribed by the Government who granted the licence, was the Collector and not the Commissioner. It is under these circumstances, we are inclined to interfere and remand the matter afresh to the authority prescribed, i.e. the Collector, who had granted the licence.

Today, there is no dispute of the identity of such authority.

As such, we quash the impugned order dated 23.05.2017 passed by Excise Commissioner, Bihar, Patna with direction to the parties to appear before the Collector, Muzaffapur on 22.02.2021, at 10:30 a.m.

Since the proceedings pertain to the year 2014-2015, we expedite the process with a further direction to the authority to positively conclude the proceedings on or before 31st of March, 2021.

Parties undertake to fully co-operate in the proceedings.

Needless to add, all issues of fact and law are left open to be raised by the parties and to be adjudicated by the authority.

Petition stands disposed of with the aforesaid observations and directions.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/DKS-

AFR/NAFR	
CAV DATE	
Uploading Date	12.02.2021
Transmission Date	