IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3370 of 2022

Smt. Arati Sahoo	**……..**	***Petitioner***
		Mr. Prafulla Kumar Rath, Adv. Mr. S.K. Behera, Adv.

-Versus-

State of Odisha & others	**……..**	***Opp. Parties***
		Mr. P.K. Muduli, AGA

CORAM:

JUSTICE S. TALAPATRA
JUSTICE M.S. SAHOO

ORDER
02.09.2022

Order No.
01.

1. This matter is taken up through Hybrid Arrangement (Virtual/ Physical Mode).

2. Heard Mr. P.K. Rath, learned counsel along with Mr. S.K. Behera, learned counsel appears for the petitioner.

3. Being aggrieved by the demand notice dated 09.12.2021, Annexure-1 to the writ petition, which has been subsequently renewed by the demand notice dated 25.05.2022, the petitioner has filed this petition seeking the writ of certiorari.

4. We have perused the nature of the controversy which, in short, is that there was a shortfall of IMFL beer in respect of the shop of the petitioner during the year 2017-18. As consequence thereof, the revenue had asked the petitioner to deposit the duty amount along with 10% fine over the short-fall quantity as given in the table placed in the demand notice dated 09.12.2022. The table shows as under:

Period for which License issued	Monthly MGQ	MGQ due	MGQ lifted	Shortfall (IMFL Rs.399/- per LPL & Beer 69/- per BL)	Shortfall duty + 10% Fine (In Rs.)
2017-18 (From 05.01.2018 to 12.02.2018)	IMFL 2259.245 LPL BEER 3427.820 BL	IMFL 2935.978 LPL BEER 4454.587 BL	IMFL 32.400 LPL BEER 47.400 BL	IMFL 2903.578 LPL BEER 4407.187 BL	16,08,886/-

On computation, the demand has been aggregated to Rs.16,08,886/-.

5. Mr. Rath, learned counsel has submitted that, almost in similar circumstances, this Court passed certain directions on the revenue.

6. In ***Sujit Kumar Sahoo vs. State of Odisha & others*** (the order dated 05.11.2019 delivered in **W.P.(C) No.6722 of 2019**), this Court having referred to the earlier decision of this Court in ***Shakti Prasad Mohanty Vs. State of Odisha*** & others (the order dated 27.01.2016 delivered in **W.P.(C) No.6779 of 2015**) observed that:

> *"The petitioner is not liable to pay any demand for the MGQ during the closure period and any amount due and payable prior to the date of closure for the shop shall be paid by the petitioner."*

7. Mr. Rath, learned counsel for the petitioner has submitted that the substantive period of demand falls within the closure, but there had been no adjustment in this regard.

8. Mr. P.K. Muduli, learned Addl. Government Advocate appearing for the State has contended that the petitioner did have efficacious and alternative remedy in the form of appeal under Chapter-XX of the Orissa Excise Rules, 2017. That remedy is exhaustive in as much as enquiry into the pleaded facts is essentially required. Such enquiry is not expected to be carried out in a proceeding under Article-226 of the Constitution of India. Rules-250, 251 & 252 of the Orissa Excise Rules, 2017, if read conjointly, it would surface that the order, as challenged by this petition is appellate. On a query from this Court, the counsel for the parties have agreed that the limitation as prescribed by Rule-252 of the Orissa Excise Rules, 2019, *per se* will not apply, as the challenge is against the demand.

9. We are of the view that there is substantive force in the submission of Mr. Muduli, learned Addl. Government Advocate and, as such, we direct the petitioner to file an appeal within seven days to the Collector of Excise or Addl. District Magistrate, as the case may be. If such appeal is filed within that period, any question relating to the limitation emerges that shall stand waved.

10. Before parting with the records, we would like to observe that the petitioner will be at liberty to place all the decisions of this High Court, relevant in the context, and the Collector or the ADM shall take due care of those decisions before passing the final order.

11. No coercive action shall be taken before the appeal is disposed of.

12. Urgent certified copy of this order be granted as per rules.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge

Subhasis