

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5315 of 2017

Bandana Sahoo

....

Petitioner

Mr. Arun Kumar Patra, Advocate

-versus-

State of Orissa and others

.... ***Opposite Parties***

Mr. Debakanta Mohanty

Additional Government Advocate for State

CORAM:

**THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
22.12.2022**

Order No.

- 04.
1. Learned counsel for the Petitioner states that since the issue involved in the present petition is similar to the one in W.P.(C) No.5534 of 2012, the present petition be disposed of in terms the order dated 30th April, 2019 passed therein.
 2. Learned Additional Government Advocate does not dispute this position.
 3. The Petitioner as a country spirit exclusive privilege licensee seeks to challenge either a demand of duty raised for short fall M.G.Q. or the threat of non-renewal of subsequent year's license in absence of deposit of duty on short fall M.G.Q. for the year 2016-17, purportedly on the ground that there was shortage of supply of country spirit by the Odisha State Beverage Corporation Limited, for short, "OSBCL" (monopoly wholesaler) which we have been

given to understand was on account of inability of M/s. Aska Cooperative Sugar Industries Limited, for short, “M/s. ACSIL” (monopoly producer) from manufacturing and supplying the necessary amount of country spirit resulting in short supply of country spirit. Learned counsel appearing in this case essentially contend that if the monopoly wholesale supplier i.e. “OSBCL” is not in a position to supply the requisite amount of country spirit as would be required to be lifted by the country spirit retailer licensee in terms of its M.G.Q. undertaking any demand against short fall of M.G.Q. and/or threat of non-renewal on the ground of non-deposit of such short fall ought to be set aside by the Courts.

4. Heard Mr. A.K. Patra, learned counsel for the petitioner and learned Additional Government Advocate on behalf of the opposite parties.

5. In this writ application, the petitioner, who is exclusive privilege holder and had been granted licences for retail sale of country spirit, has filed this writ application seeking direction for waiver of M.G.Q. duty to the extent there had been short supply of country spirit by the “OSBCL” a wholesale monopolist and State undertaking during the relevant excise year 2016-17.

6. In support of the aforesaid prayer, the petitioner has sought to challenge the demand notice dated 20th March, 2017 under Annexure-3. In terms of letter dated 12.12.2011, the Excise Commissioner, Odisha, Cuttack directed all Superintendents of Excise to accord permission in favour of the licensees of country spirit shops to lift short fall M.G.Q. in country spirit liquor of their respective shops for the excise year 2011-12 by the end of

February, 2012. In the said order, it is further directed that there would be no adjustment whatsoever against over-lifting in any month and the Superintendents of Excise concerned were directed that while issuing permission letter in favour of the retail licensees of their districts, they shall ensure that no such adjustment is made and only short fall quantity of country spirit liquor up to February, 2012 would be allowed to be lifted by the end of March, 2012 over and above their normal M.G.Q. for the month of March, 2012. According to Mr. Patra, learned counsel for the Petitioner, the “OSBCL” was unable to supply the required amount of country spirit during the relevant excise year as would be evident from the document under Annexure-4 (in W.P.(C) No.5534 of 2012) is a letter addressed by the Superintendent of Excise to the Excise Commissioner, Odisha, Cuttack with copy to Branch Manager, O.S.B.C. dated 16th March, 2012 indicating short supply of country spirit liquor in respect of all country spirit shops in the district Jajpur. The said letter also makes it clear that “M/s. ACSIL” being the sole supplier of country spirit inside the State while enjoying the exclusive privilege in this regard, there has been irregularity in supply. In such background, he submits that instead of waiving the demand of duty for the period of short supply of country spirit, Opposite Party No.4 has issued Annexure No.5 compelling the Petitioner to deposit excise duty on shortfall quantity of M.G.Q.

7. A counter affidavit has come to be filed by the Superintendent of Excise, Jajpur (in W.P.(C) No.5534 of 2012). In the said counter affidavit, at para-7 he has stated that there is no record available in office of the deponent about short supply of C.S. liquor by the

OSBC, Depot., Balasore. Further he has not disputed the Government Order dated 19th April, 1994 allowing waiver of duty on M.G.Q. on account of non-supply of country spirit for the year 1993-94.

8. Since it is admitted fact that there has been short supply during the certain period of the year, we are of the considered view that any demand or insistence on payment of duty on short fall M.G.Q. for the said period ought to be considered to be waived as the licence holders cannot be put to difficulty for no fault of their own. In such background, we are further of the considered view that the letter of the Commissioner under Annexure-2 (in W.P.(C) No.5534 of 2012) requiring all licensees to lift the entire short fall of the year in the month of February, 2012 is also inappropriate inasmuch as it may not be possible for many retail licensee to dispose of the entire short fall of lifting of an year in one particular month that to last month of the excise year. Apart from the above, it is also brought to our notice that the Odisha State Beverage Corporation maintains records of the availability of country spirit at his own depots. Therefore, in our considered view, it would be appropriate to dispose of this writ application with the following directions:

I. Wherever the demand of excise duty towards short fall of M.G.Q. in country spirit liquor has been raised, the same may be recalled and wherever the retailers have been threatened with non-renewal of license on account of non-deposit of duty on short fall M.G.Q., the same shall not be given effect to. The concerned Superintendent of Excise shall then carry on the exercise

of ascertaining the actual facts relating to availability of stock with the “OSBCL” Depots from which supplies have been made to the respective retailers. On comparison with the records of the “OSBCL” and availability of the stock with the said Corporation as well as the requisition required to be made during the said period to meet the retailers’ M.G.Q., the demands may be suitably revised. If it is found that in any particular period, the stock was not available, the demand for unlifted M.G.Q. may be waived.

II. We further direct that the concerned Superintendent of Excise shall carry out this exercise of re-computing short fall M.G.Q. and consequent demand for excise duty on such short fall, if any, on the basis of the aforesaid directions be made after determining factual position in each individual case and wherever necessary, he should call upon the retailer to provide necessary evidence. The aforesaid directions be carried out by the respective Superintendents of Excise of each district with regard to the cases involving similar issues. The entire exercise shall be completed within a period of three months from today. In this regard, if necessary, the Principal Secretary to Government of Odisha in the Department of Excise may issue a necessary guideline as done during the excise year 1993-94. We leave it to the Principal Secretary to Government of Odisha in the Excise Department to consider as to whether the circumstances that arise during

the relevant excise years necessitate issue of such notification or not. We pass the aforesaid direction in view of the fact that a licensee cannot be made liable to deposit the excise duty on M.G.Q. if the state and/or its wholesale licensee-“OSBCL” is not a position to effect supply of country spirit for whatever reasons.

9. Free copy of this order be handed over to the learned counsel for the State for necessary communication. Urgent certified copy of this order be granted on proper application.

S.K. Jena/S. Behera

