IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22074 of 2022

Karunakar Behera ……… ***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 appearing for the petitioner.

3. Being aggrieved by the demand notice dated 25.05.2022, the petitioner has filed this application seeking the writ of certiorari.

4. We have glanced at 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 as provided in the table placed in the demand notice dated 25.05.2022. The table shows as under:

Period for which License issued	Monthly MGQ (In LPL)	MGQ due (In LPL)	MGQ lifted (In LPL)	Shortfall (In LPL)	Shortfall duty + 10% Fine (in Rs.)
2017-18 (From 29.12.2017 to 31.03.2018)=3 Months & 3 Days	5545.350 LPL	17172.697 (3 Months & 3 Days)	0	17172.697 (@Rs.75/-) Per LPL as applicable for 2017-18	14,16,748/-

On computation, the demand has been aggregated to Rs.14,16,748/-.

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 has submitted that the substantive period of the 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 inasmuch 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 appealable. 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

RRJena/Gs