IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7330 of 2022

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Molson Coors Cobra India Pvt. Ltd. a registered Company incorporated under the Companies Act, 1956 having its registered office at 501, DLF Tower-B, District Centre Jasola, New Delhi-110025 through its Vice President and authorized signatory Sri Ganeshmoorthy Muthusamy, aged 53 yeas, son of Shri S V Muthusamy, resident of 26, Jothi Colony, Narasimhanaickenpalayam, P.S. Periyanaickepalayam, District-Combatore, State-Tamil Nadu-641 031.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Deputy Commissioner of Excise (Distilleries and Warehouses), Bihar, Patna.
4. The Collector, Patna.
5. The Assistant Commissioner of Excise, Patna.
6. The Bihar State Beverage Corporation Limited, a Government of Bihar Enterprises, having its registered office at 1st Floor, Vidyut Bhawan-II, Jawaharlal Nehru Marg, Patna-800001 through its Managing Director.
7. The General Manager, Operation-I, The Bihar State Beverage Corporation Limited, a Government of Bihar Enterprises, having its registered office at 1st Floor, Vidyut Bhawan-II, Jawaharlal Nehru Marg, Patna-800001.

.. ... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Satyabir Bharti, Advocate
	Mr. Abhishek Anand, Advocate
	Ms. Sushmita Sharma, Advocate
	Ms. Kanupriya, Advocate
For the State :	Mr. Vivek Prasad (GP 7)
	Mr. Sanjay Kumar, AC to GP 7
For the Beverage Corporation	Mr. Lalit Kishore, Sr. Advocate
	Mr. Girijish Kumar, Advocate
	Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-09-2023

It has been pointed out that in the order dated

18.09.2023, inadvertently it has been mentioned as order no. 4 in place of order no. 24. Similarly, in the order dated 19.09.2023 also, it has been mentioned as order no. 5 in place of order no. 25.

2. Let ‘the order no. 4 dated 18.09.2023’ and ‘order no. 5 dated 19.09.2023’ be read as ‘order no. 24 dated 18.09.2023’ and ‘order no. 25 dated 19.09.2023’.

3. Accordingly, both the aforesaid orders are modified to the aforesaid extent only.

4. With the consent of the learned counsels for the parties matter is taken up for final disposal.

5. In the instant petition, petitioner has prayed for the following relief(s):-

> “(i) *Quashing the order dated 05.05.2022 (Annexure-9), as contained in letter no. 2319, passed by the respondent no. 3, namely the Deputy Commissioner of Excise (Distilleries & Warehouses), Bihar, Patna on the direction of the respondent no. 2, namely the Excise Commissioner, Bihar, by which, in gross violation of the interim order dated 12.11.2020, passed in CWJC No. 7463 of 2020 (Molson Coors Cobra India Pvt Ltd vs The State of Bihar) and other analogous cases, directing that no coercive action be precipitated against the petitioner during the pendency of the writ petition, referring to Section 28 of the Bihar Prohibition & Excise Act, 2016, the application of the petitioner seeking permission for removal and shifting of the Plant & Machineries installed at its brewery at Bihta, District-Patna has been refused on the pretext of outstanding dues of Rs. 12.2 Crores, payable to the respondent no. 6, the Bihar State Beverages Corporation Ltd.*

(ii). Issuance of writ in the nature of mandamus, directing the respondents particularly the respondent No.2. namely, the Excise Commissioner, Bihar to permit the petitioner to remove the plant, machinery and other equipment installed at its brewery at Bihta, District- Patna:
(iii). Pass such other order(s) as your Lordships may deem fit and proper in the facts and circumstances of the present case."

6. Learned counsels for both the parties submitted on instruction that pursuant to the interim direction of this Court dated 27.09.2022, there was an interim arrangement insofar as lifting of plant and machineries of the petitioner with reference to his request and subject to furnishing of bank guarantee. To that effect an order has been passed on 23.09.2022 by the Excise Department. Petitioner is stated to have furnished bank guarantee.

7. Now coming to the merits of the case, learned counsel for the petitioner submitted that impugned order/communication dated 05.05.2022 of the Deputy Commissioner of Excise insofar as adjustment of outstanding dues payable to the 6th respondent-BSBCL is without authority of law and there is no source of power to the Excise Department to undertake such exercise of adjusting certain dues of the Bihar State Beverage Corporation Limited (BSBCL) in respect of certain liquors' stock of the petitioner was lying with the BSBCL for which the petitioner was liable to pay dues.

8. *Per contra*, learned counsel for the respondents

resisted the aforementioned contention and submitted that the petitioner has a statutory remedy of appeal and further the present case is depending upon subject matter relating to refund of excise duty including VAT issue.

9. Heard learned counsels for the respective parties.

10. We repeatedly asked the State counsel to apprise as to whether Deputy Commissioner of Excise or Excise Department has any source of power to adjust certain dues of BSBCL. On this point he is unable to point out any specific provision of law insofar as power entrusted with the Deputy Commissioner of Excise or any of the officials of the Excise Department to undertake such adjustment. Learned counsel for the respondents submitted that it is an appealable order, but the same cannot be appreciated for the reasons that impugned action is without authority of law. In such an event petitioner cannot be relegated to raise the issue before the appellate authority. In other words, it would go to the root of the matter that the Deputy Commissioner of Excise has no jurisdiction insofar as any adjustment of demurrage charges levied by the BSBCL is concerned.

11. The interim arrangement insofar as order of this Court dated 27.09.2022 read with order of Excise Department dated 23.09.2022 is only an interim arrangement, the same could not be final in view of pendency of the present petition.

12. Accordingly, the petitioner has made out a case, hence, Annexure-2 stands set aside and writ petition is allowed.

13. Concerned respondent is hereby directed to return the bank guarantee furnished by the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

14. At this stage, learned counsel for the respondents submitted that Section 10 of the Bihar Prohibition and Excise Act, 2016 is attracted to the effect that Excise Department are empowered to adjust the demurrage which was due to the BSBCL. Section 10 of the Bihar Prohibition and Excise Act, 2016 reads as under:-

> *"10. Powers and functions of the Excise Commissioner. - The Excise Commissioner shall-*
> *(a) enforce complete prohibition in the State in accordance with the provisions of this Act;*
>
> *(b) promote culture of non drinking and make Prohibition a voluntary effort through social awareness;*
>
> *(c) regulate, control and monitor the manufacture, possession, import, export, and transport of intoxicants;*
>
> *(d) curb illegal trade in liquor and illicit distillation;*
>
> *(e) protect excise revenue and ensure prompt recovery;*
>
> *(f) submit returns and information as required under this Act or the rules framed thereunder, to the State Government upon all matters concerning excise;*
>
> *(g) perform such functions and to exercise such other powers as may, from time to time,*

be entrusted or delegated to him.”

15. Reading of the above noted provision, it is crystal clear that there is not an iota of material to the extent that Excise Department could adjust certain amount levied as a demurrage by the BSBCL as arrears of revenue of the State Government. In view of these factual matrix, it is a case warranted for imposing cost on the State-respondent. Cost of Rs. 10,000/- is imposed on the official respondent. Cost shall be remitted in the Patna High Court Legal Services Authority within a period of eight weeks from the date of receipt of a copy of this order.

16. Disposal of this case would not be a hurdle for BSBCL to take appropriate action in accordance with law insofar as demurrage charge is concerned, while taking note of the fact that whether agreement was executed for the relevant period or not?

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Balmukund/
Himanshu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2023
Transmission Date	NA