

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

04.10.2023
Ct. no.1
Sl. 1
sp

WPA No. 2378 of 2023

Jalpaiguri Hoteliers and Trading Private Limited & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Bikramaditya Ghosh,
Mr. Anirban Banerjee

.... For the Petitioner

Mr. Hirak Barman,
Mr. Momenur Rahman

.... For Union of India

1. The petitioners are aggrieved by demand of penalty on excise licence vide order dated July 7, 2023 passed by the Collector of Excise.

2. The facts of the instant case are that the petitioners were running a bar-cum-restaurant with a licence from the Excise authority. On March 27, 2015, two percent of the share holding of the petitioners company changed hands. There was also change of Directors on the Board of Management of the petitioners company in the year 2017.

3. The Excise authorities were of the view that the change of two percent share holding amounted to a change of management of the petitioners and hence violated Rule 4(2) of the West Bengal Excise (Change in Management) Rules, 2009.

4. The Excise authority issued demand of notice dated September 18, 2018 which is modified by the appellate authority in the order dated July 23, 2021, the penalty was reduced to Rs. 16.5 lakhs.

5. Counsel for the petitioners Mr. Bikramaditya Ghosh would argue that a two percent change in the share holding pattern of a company, by no stretch of imagination, can amount to a change of management.

6. This Court is inclined to accept the said argument. A change of management can occur if at least 25 or more percent of the share holding changes hands or a controlling interest is transferred or there is a transfer of share holding, amounting to change of controlling interest, occurs in a company.

7. A transfer of two percent in the share holding pattern, cannot amount to change of the management or controlling of interest of any company. Reliance placed by Mr. Ghosh, on a decision of the Co-ordinate bench in the case of ***IFB Agro Industries Limited and Another vs. State of West Bengal and Others*** reported in ***2022 SCC Online Cal 3707*** is appropriate.

8. For the reasons indicated hereinabove and also the reasons indicated in the ***IFB Agro Industries Limited and Another (supra)***, the impugned order shall stand set aside.

9. The petitioners shall be able to run their bar-cum-restaurant as if no penalty was ever imposed on them.
10. The continuation of the licence, however, shall be subject to the normal applicable rules and fee payment therefor.
11. With the aforesaid observations, the instant writ petition shall stand disposed of.
12. There shall be no order as to costs.
13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)