IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21776 of 2018

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M/s Spicy Beverage Pvt. Ltd. Director Sri Deepak Kumar, Son of Shri Shankar Prasad, Resident of Bankipur Fatua, P.S. Fatua, District-Patna-803201.

... ... Petitioner

Versus

1. The State Of Bihar.
2. The Chairman-Cum-Member, Board of Revenue, Bihar, Patna
3. The Excise Commissioner, Bihar, Patna.
4. The Collector, Nalanda.
5. The Superintendent of Excise, Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate
		Ms. Kanupriya, Advocate
		Mr. Abhishek Anand, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-10-2024

In the instant petition, the petitioner has prayed for the following reliefs:

> *"(i) Quashing the order, dated 20.9.2018 passed by the Chairman-cum-Member, Board of Revenue, Bihar, Patna (Annexure-20) in Excise Revision Case No.13 of 2016, by which the Revision application preferred by the petitioner under section 8(3) of the Bihar Excise Act, 1915 against the order, dated 11.2.2016, as contained in memo No.489, passed by the Collector, Nalanda, has been dismissed on the ground that the revision application is not maintainable and the petitioner*

could have filed an appeal before the Excise Commissioner;

(ii) Quashing the order, dated 11.2.2016, as contained in memo No.489, passed by the Collector, Nalanda, by which in teeth and gross contempt of the judgment of the Hon'ble Patna High Court in C.W.J.C. No. 21965 of 2014 (Annexure-15, Page-88), without determining as to whether the country liquor samples so seized from the retail licensees, was in fact manufactured and supplied by the petitioner, as was directed by the said judgment, the demand so earlier raised has been reaffirmed.;

(iii) Quashing the consequential demand notice dated 22.2.2016, as contained in memo No.512 (Annexure-17, Page-103) issued under the signature of the Superintendent of Excise, Nalanda by which without giving any opportunity of hearing, the demand so earlier raised has been reaffirmed;

(iv) To direct the respondents to refund a sum of Rs.37,60,776.00 deposited by the petitioner by way of an interim measure during the pendency of the revision application before the Board of Revenue, Bihar;

(v) To pass such other order (s) as your lordship may deem fit and proper in the facts and circumstances of the present case;

2. Petitioner feeling aggrieved by the order of the Revisional Authority as well as Collector order dated 11.02.2016 preferred this petition. The petitioner had a cause action in filing statutory appeal before the Appellate Authority pursuant to the Collector’s order dated 11.02.2016, on the other hand, he had bypass the remedy of appeal and filed a Revision

petition before the Revisional Authority. Revisional Authority in Revision Case No. 13 of 2016 has raised a preliminary objection to the extent that petitioner has not exhausted remedy of statutory appeal before the Appellate Authority under Section 8(2) of the Bihar Excise Act.

3. Perusal of the pleadings, petitioner has not specifically pin pointed out that he need not exhaust appeal remedy on the score of violation of any statutory provision or violation of any principle of natural justice in passing order by the Collector so as to examine without exhausting the remedy of appeal before the Appellate Authority C.W.J.C could be decided. Therefore, petitioner has to exhaust statutory remedy of appeal before the Appellate Authority. In fact, Revisional Authority should have transmitted the Revision petition before the Appellate Authority requesting for conversion of Revision petition to that of memorandum of appeal and to decide such Appeal by the Appellate authority.

4. Be that as it may, petitioner is hereby directed to file appeal before the Appellate Authority against the Collector order dated 11.02.2016 within a period of four weeks from today. On receipt of such memorandum of appeal, the Appellate Authority is hereby directed to examine and pass a detailed

speaking order after due consideration of each of the contention to be raised in the memorandum of appeal. The above exercise shall be completed within a period of two months from the date of receipt of the petitioner's memorandum of appeal.

5. With the above observation, present Writ petition stands disposed of.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.10.2024
Transmission Date	NA