(2012) 10 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 1382 of 2007

Sheo Narain Singh APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 10, 28

Citation : (2012) 4 JLJR 593

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : P.K. Prasad and Mr. Prabir Chatterjee, for the Appellant;

Judgement

Aparesh Kumar Singh

1. Heard learned Counsel for the parties. Petitioner has prayed for issuance of mandamus commending upon the respondents to refund the petitioner a sum of Rs. 7,52,061.90 being the amount of the difference of excise duty resulting from reduction in the rates of duty imposed on India made foreign liquor and beer w.e.f. 1.7.2004.

2. According to the petitioner he is the proprietor of Libra Marketing and holds excise license in Form 1 at Jharia in the district of Dhanbad for the sale of India made foreign liquor and beer to other licensed dealers. Petitioner purchases its excisable articles from different distributors holding license in Form 19C in the State and sells it to the retail vendors under the terms and conditions of the license. It is submitted that under the Bihar Excise Act, 1950 the manufacture, import, export, transport, sale and possession of intoxicating liquor is regulated and section 10 of the Act imposes restriction on export or transport of intoxicants unless duty is paid under Chapter V. or a bond has been executed, thereof. u/s 28 of the Act, the State provides for ways of levying duty on excisable articles Learned Counsel for the petitioner further submits that Rule 147 framed by the State Government u/s 90, Clause (12) of the said Act prescribes the time, place

and manner of payment of the duty, which is reproduced herein below:-

Provided further that in case of any revision in the rate of duty on an excisable article, the difference of duty shall be realized from or credited to the licensee, to whom such articles has been issued on payment of duty prior to such revision according as the revised rate of duty is higher or lower than the old rate and calculation of the difference of duty shall be made on the quantity of such article that may remain in possession of such licensee when the revised rate duty comes into force.

3. It is submitted by the petitioner that he transported Indian made foreign liquor and beer from the premises of the holders of distributors licenses in Form 19C situated within the State under Rule 18-A(2) and under a transport pass granted by the Assistant Commissioner of Excise, Dhanbad after paying the cost price of liquor and the duty imposed thereon u/s 27 of the Act and also Sales Tax at the prescribed rate. It is also submitted that till June, 2004 petitioner transported India made foreign liquor and beer from the distributor''s licensed premises on payment of cost price of liquor and duty at the following rates:-

India made foreign liquor- Rs. 100.00 per L.P. Litre

4. It is submitted that by notification dated 30.6.2004 vide order no. 968 and 969 contained at Annexure-2 and 2/1 a new Excise police was adopted by the Government of Jharkhand, wherein the Excise duty payable on the minimum guaranteed quantities of India made foreign liquor and beer fixed for the group of retail foreign liquor shops was merged with license. As per the petitioner in view of the said notification duty on India made foreign liquor was reduced from the flat rate of Rs. 100 per L.P. Litre to Rs. 10 L.P. Litre for ordinary category, Rs. 20 per L.P. Litre for premium category and Rs. 30 per L.P. Litre for super premium category. Similarly duties on beer of different category were reduced from Rs. 8, 12 and 15 per Bulk Litre to Rs. 1.50, 2.00 and 3.00 per bulk litre respectively w.e.f. 1.7.2004. It is further submitted that directions were issued by the Respondent No. 2, the Commissioner-cum-Secretary, Excise & Prohibition Department, Government of Jharkhand dated 29.6.2004 to all the district authorities to verify the balance of stocks of India made foreign liquor and beer remaining in the possession of all the distributors and wholesalers of foreign liquor on 30.6.2004 after sale hours. The same were verified by the excise authorities on 30.6.2004 after sale hours as per Annexure-5 to the petition. It is therefore, submitted that petitioner is entitled to refund of excess excise duties paid on the balance stocks of India made foreign liquor remaining in possession of the petitioner on 30.6.2004 after the sale hours after reduction in the rates of excise duty of the aforesaid articles pursuant to the decision of the State Government of Jharkhand as contained in annexure-2 and 2/1. As such the sum of Rs. 7,52,061.90 as the difference of the amount on excise duty resulting from reduction of excise duty on the balance quantities of stocks after sales hours on 30.6.2004 must be refunded to the petitioner. Petitioner has relied upon Section 25 and Rule 147 made by the Board of Revenue for his entitlement of such

refund of difference of duty. In support of his contention, learned Counsel for the petitioner has relied upon a judgment delivered by this Court in W.P.C. No. 2812 of 2006 dated 13.11.2006 and also W.P.C. 7514 of 2006 dated 12.9.2012, where in a similar circumstances in respect of similarly situated persons, this Court have been pleased to direct the respondent-excise officials to refund the excess excise duty on account of reduction of duty of the stock of the said petitioner as available on 30.6.2004 or adjust the same against the future payment by the petitioner towards the excise duty on the import fee under the Excise Act for whole sale dealer of the aforesaid excisable articles.

5. Learned Counsel for the respondents have appeared and filed their counter affidavit. It is submitted on the basis of the averments made in the counter affidavit that on verification done at the instance of respondent no. 4 on 3.5.2007 in the presence of authorized signatories of the petitioner, it transpired that the petitioner has disposed of most of the stocks lying in his custody without obtaining permission from the excise officials for disposal of the same.

6. Petitioner on the other hand through his rejoinder has categorically denied these assertion stating that on the stocks of India made foreign liquor and beer remaining with the petitioner on 30.6.2004 after sales hours, the articles which have been sold have been done only after permission of the Excise officials to the licensed retain vendors only against passes issued by the respondent no. 4. It is therefore, submitted that the contention of the respondents that the stocks were sold without any permission of the authorities is incorrect. All such sales of stocks were duly accounted in the daily transaction, which were recorded in the prescribed Register in Form No 88, which is open for inspection by the respondent-authorities. It is further submitted that the in view of the condition VIII of the license granted to the petitioner, no India made foreign liquor or beer can be sold by the petitioner except under a pass granted by the respondent no. 4. Petitioner has never been charged with violating the said condition. Accordingly, petitioner submits that he is only seeking refund of excess amount of excise duty calculated on the balance stocks remaining of IMFL and beer with the petitioner on 30.6.2004 after sales hours and not on any stocks on any subsequent date. Counsel for the petitioner has relied upon order dated 15.6.2006 in W.P.C. No. 5702 of 2006 passed by a Division Bench of this Court contained at Annexure-11 and also the judgments, which have been quoted herein above.

7. I have heard the counsel for the parties and gone through the relevant materials on record. It appears that the excise duty on beer and IMFL was reduced w.e.f. 1.7.2004. Petitioner has annexed documents contained in Annexure-5 showing the verification and inspection of balance stocks of the aforesaid excisable articles remaining in possession of the petitioner after sales hours on 30.6.2004. Petitioner, in the facts and circumstances has sought for refund of excess of the excise duty paid by the petitioner on the aforesaid articles in view of the reduction made in the excise duty pursuant to the

Government decision, as contained in Annexure-2 and 2/1 dated 30.6.2004. The contention of the respondents is refuted by the petitioner by submitting that he is seeking refund of only the difference of the excise duty upon such reduction made effective from 1.7.2004 on the balance stocks available with him as on 30.6.2004 after sale hours and not on any stocks which were available with the petitioner on any subsequent date. According to the petitioner, he is holding whole sale license of the said articles continuously from the period in question. As per the submission of the petitioner any sale of such articles after 1.7.2004 has been done only with the permission of the Excise Officials to the licensed retail vendors only against the passes issued by the respondent no. 4, Assistant Commissioner of Excise, Dhanbad. All such sale are duly entered in prescribed register in Form 88. In these circumstances, keeping in regard the decision rendered by this Court in W.P.C. No. 2812 of 2006 and other cases, respondents are directed to refund the difference amount of excise duty on the stocks of the petitioner as were available on 30.6.2004 after due verification and keeping into regard the documents, which have been relied by the petitioner of such inspection pursuant to the reduction of the excise duty on such articles w.e.f. 30.6.2004 or adjust the same against future payment to be made by the petitioner towards excise duty on import fee under the Excise Act and the Rules, thereof. Let the aforesaid exercise be carried out within 3 months from the date of receipt of copy of this order. The writ petition is disposed of in the aforesaid terms.

