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(2023) 01 OHC CK 0038

In the Orissa High Court

Case No : Writ Petition (C) No. 13631 Of 2014

Sushanta Kabi, Bhadrak APPELLANT

Vs

State Of Odisha And Others RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:

Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 — Rule 6A

Citation : (2023) 01 OHC CK 0038

Hon'ble Judges : Dr. S. Muralidhar, CJ;M.S.Raman, J

Bench : Division Bench

Advocate : Prafulla Ku. Rath, Debakanta Mohanty

Final Decision : Disposed Of

Judgement

1. The demand notice dated 4th July, 2014 issued by the Superintendent of Excise, Bhadrak to the Petitioner for realization of short drawn quantity of MGQ of IMFL and Beer for the years 2011-12 and 2012-13 is under challenge in the present petition.

2. While directing notice to issue in the present petition on 7th August, 2014 this Court stayed the operation of the demand notice.

3. Pursuant to the notice issued, counter affidavit has filed by the Opposite Parties-State. Separately, the Petitioner filed I.A. No.17441 of 2022 enclosing inter alia a statement of lifting of MGQ by the Petitioner from April, 2012 to March, 2013 as Annexure-5.

4. The contention of the Petitioner is that the statement which is enclosed as Annexure-5 to I.A. No.17441 of 2022, would show that by the end of the period April, 2012 to March, 2013 the quantity lifted was much more than the MGQ. On that basis, Mr. P.K. Rath, learned counsel for the Petitioner states that the demand was wholly unjustified as it was raised without referring to the above figures. He also places reliance on the decision in Laxmi Narayan Mohanty v. State of Odisha (2005) 99 CLT 389 which explained the scope of Rule 6-A of the

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Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 (Rules, 1989).

5. Having heard learned counsel for the parties, the Court is of the view that the Commissioner of Excise should examine the figures now produced by the Petitioner and pass a fresh reasoned order on whether the impugned demand notice issued to the Petitioner on 4th July, 2014 was justified in law.

6. The matter will now be placed before the Excise Commissioner on 1st March, 2023 on which date the Petitioner will appear along with a downloaded copy of this order at 11 am. The Commissioner of Excise will examine the aforementioned judgment cited by the Petitioner in light of Rule 6-A of the Rules, 1989 and Annexure-5 and pass a fresh reasoned order as regard the impugned demand notice dated 4th July, 2014 within a period of three months thereafter. Till such time, no coercive steps shall be taken against the Petitioner.

7. The Petitioner is permitted to place further chart/documents before the Excise Commissioner, Odisha, Cuttack.

8. The writ petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

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