(2010) 08 PAT CK 0145

In the Patna High Court

Case No : CWJC No. 1565 of 1995

United Brewery Distilleries Ltd. APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0145

Judgement

S.K. Katriar, J.—This writ petition is directed against the order dated 24.1.1995 (Annexure-1), passed by the Excise Superintendent, Mirganj Distillery, whereby it has been called upon to deposit a sum of Rs. 26,138.75p., being the penal duty in terms of Section 27 of the Bihar Excise Act, 1915 (hereinafter referred to as the ''Act''), on rectified spirit.

2. A brief statement of facts essential for the disposal of this writ petition may be indicated. The Petitioner is the holder of licence in Form No. 29-A of the Act, and is, inter alia, engaged in manufacture of rectified spirit unfit for human consumption. The Petitioner had sold and supplied 1,66,350.00 London Proof Litres (hereinafter referred to as the ''LPL''), of rectified spirit to Serampur Distillery & Chemicals Co. Ltd., West Bengal. There was loss in transit on account of evaporation and leakage beyond the permissible limit, namely, 1045.55 LPL (wrongly states as 1065.55 LPL), which was allegedly in excess of the allowable wastage. The Excise Superintendent, therefore, served the impugned notice on the Petitioner to deposit a sum of Rs. 26,138.75p. as penal duty, which was deposited under protest on 13.2.1995. A photocopy of the challan is marked Annexure-B to the counter affidavit.

3. Learned Counsel for the Petitioner submits that rectified spirit is unfit for human consumption and, therefore, no excise duty within the meaning of the Act is leviable thereupon. It is used as raw material for manufacture of alcohol fit for human consumption and can be subjected to the duties of excise under the Act. He relies on the following reported judgments:

(i) New Swadeshi Sugar Mills Ltd. v. State of Bihar 1983 PLJR 105.

(ii) The same was upheld by the Supreme Court, by its order dated 24.8.1994, in State of Bihar v. New Swadeshi Sugar Mills Ltd. and Anr. (2003) 11 SCC 478.

(iii) State of Bihar and Others Vs. Industrial Corporation Pvt. Ltd. and Others,

(iv) State of U.P. and Others Vs. Modi Distillery and Others, and

(v) McDowell and Co. Limited Vs. The State of Bihar and Others, : C.W.J.C. No. 8691 of 1994 (paragraph 13).

4. We have perused the materials on record and considered the submissions of learned Counsel for the parties. Identical issues came up for consideration before us in which has been allowed with interest at the rate of 18%, and costs quantified at Rs. 25,000/-(Twenty-five thousand), by judgment dated 17.8.2010, on just the same grounds. The Petitioner is also supported by a judgment of a learned Single Judge of this Court in S.K.G. Sugar Ltd. Abhay Bhawan Vs. The State of Bihar and Others It is now well established that rectified spirit is unfit for human consumption and cannot, therefore, be subjected to the levy under the Act. In view of the well settled position by decisions of the Supreme Court and the High Court, the impugned notice is arbitrary and a case of purposive harassment.

5. In the result, this writ petition is allowed, and the impugned notice dated 24.1.1995, is hereby set aside. The Superintendent of Excise, Mirganj Distillery, is hereby directed to refund the said sum of Rs. 26,138.75p. alongwith interest at the rate of 18%, with effect from 13.2.1995, till the date of refund. The Petitioner shall also be entitled to costs quantified at Rs. 25,000/- (Twenty-five thousand), all to be paid together.

Birendra Prasad Verma, J.

I agree.