(2012) 09 JH CK 0111

In the Jharkhand High Court

Case No : Writ Petition (C) No. 7514 of 2006

Yuksom Breweries Ltd. APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 27, 28, 9, 90(12)

Citation : (2012) 4 JCR 695

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant;

Judgement

Aparesh Kumar Singh

1. Heard Learned counsel for the parties. The petitioner is seeking mandamus on the respondents to refund a sum of Rs. 2,99,832/- being the amount of difference of excise duty resulting from reduction in the rates of duty imposed on beer with effect from 1st of July 2004.

2. Learned counsel for the petitioner submits that, the petitioner held a distributor''s licence at Bokaro Steel City for the sale of beer to the holders of ''sale to trade'' licences and also to military bodies throughout the State of Jharkhand. It is submitted that the petitioner company has its brewery in the State of Sikkim, from where it imports beer in the State of Jharkhand for selling the same under the terms and conditions of the licence. By referring to section 9 of the Bihar Excise Act 1915, it is submitted that this Act imposes restrictions on import of intoxicants and provides that no intoxicant shall be imported unless the State Government has given permission for its import and such conditions as the State Government may impose have been satisfied and also the duty would be payable under Chapter-V of the Act. It is further submitted that u/s 27 of the Act, the State Government has the power to impose duty on excisable items. Section 28 of the Act provides for ways to levying duty. Relevant proviso to

section 28 of the Act, are quoted herein-below.

28. Ways of levying such duty:-.... [Provided further that in case of excisable articles imported or transported on payment of duty according to the provisions of sub-clause (i) of clause (a) or clause (c) of this section, the difference of duty resulting from any provision in the rates of duty subsequent to such import shall be realised from, or credited to the account of the importing or transporting licencee according to the revised rate of duty which may be higher or lower than the previous rate and the calculation thereof shall be made on the balance stock of excisable article on the date the revised rate of duty comes into effect:]

3. Learned counsel for the petitioner submits that the petitioner imported beer from its brewery situated at Sikkim under Rule 8-A of the Rules framed under the Excise Act on prepayment of duty at the rates indicated in paragraph-14 of the writ petition. However, it is submitted by referring to S.O. No. 969 dated 30th Jun 2004 (Annexure-2) that under the new excise policy of the Government of Jharkhand, revised rate of duty was notified by which, excise duty on sale of beer was reduced. The petitioner submits that the stock remaining in its possession as on 30th June 2004 after the sale hours, was verified by the Excise Authority and it was found that the balance stock of beer on 1st July 2004 i.e. the date on which revised rate of duty on beer came into force was 29.983.20 Bulk Litres of Heman 9000 Strong Beer (Annexure-3). In support of the aforesaid submission with respect to the verification conducted by the Assistant Superintendent of Excise, Bokaro, learned counsel for the petitioner submits that the petitioner paid the duty at the old rate of Rs. 12.00 per B.L. on the balance stock of beer remaining in the possession of the petitioner as on 1st July 2004, whereafter, rates of excise duty were reduced to Rs. 2.00 per B.L. Therefore, the petitioner is entitled to refund of difference of excise duty calculated at the balance stock as on 1st July 2004 being the difference in the old and revised rates of duty which comes to Rs. 2,99,832/-. It is further submitted that the Excise Commissioner-cum-Secretary, Jharkhand undertook the exercise to call for a report of the balance stock of foreign liquor and beer for disposal of the cases of the adjustment of the difference of excise duty vide memo dated 12th January 2005 (Annexure-5). However, on the application of the petitioner made before the Assistant Commissioner of Excise, Bokaro (Respondent No. 4) seeking refund/ adjustment of the amount of difference of excise duty in terms of the provisions of section 28 of the Act and Rule 147 made by the Board of Revenue u/s 90(12) of the act, the concerned respondent has not passed any order leaving the petitioner with no other alternative than to move this court in the present writ application. The petitioner submits that in the similar circumstances, this court vide order dated 13th November 2006 passed in W.P.(C) No. 2812 of 2006, granted similar relief to Mohan Meakin Limited, Ranchi by directing the respondent Excise department to refund the excess excise duty on account of reduction in duty on the stocks of the petition as were available on 30th June 2004. It is submitted that the petitioner is therefore entitled to the similar relief as the case of the petitioner stands on similar footing.

4. Learned counsel for the respondent State, by referring to the averments made in the counter affidavit, submits that the rates of excise duty on the sale of beer were reduced with effect from 1st July 2004 and there is no dispute so far as the payment of difference of excise duty is concerned as well as the stock which were verified on 30th June 2004. Learned counsel for the respondent submits that it is not clear about the stock available with the petitioner on the date of reduction of excise duty and whether they were sold at old rate or new rate.

5. However, counsel for the petitioner disputes this argument, by saying that the similar argument was advanced earlier in the aforementioned writ application but the same was rejected by this court while directing the respondents to make the refund on the basis of the stocks found on verification as on 30th June 2004. In view of the aforesaid facts and circumstances, it appears that the material facts involved in this writ application is not in dispute. The excise duty on beer was reduced with effect from 1st July 2004. The stock of the beer lying in the petitioner''s custody after sale hours on 30th June 2004 was verified by the Assistant Commissioner of Excise, Bokaro (Respondent No. 4) and the respondent also did not dispute that the difference of excise duty is refundable to the petitioner on the unused stock. In the circumstances, since the similar relief has been granted to the similarly placed petitioner in W.P.(C) No. 2812 of 2006 vide order dated 13th November 2006 (Annexure-7), this writ petition is allowed in terms of the aforesaid order by directing the respondents to refund the excise duty on account of reduction in duty on the stocks of the petitioner as were available on 30th June 2004. This exercise must be completed within a period of three months from the date of the copy of the order is served upon the respondents.