

Court No. - 5

Case :- WRIT TAX No. - 1461 of 2023

Petitioner :- M/S Wave Distilleries Breweries Ltd

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Mohd Atif, Gaurav Gautam, Shivangi Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

Heard Ms. Shivangi Tripathi, learned counsel for the petitioner and learned ACSC for State - respondents.

While assailing the impugned order dated 01.08.2022 passed by the respondent no. 1 as well as the impugned order dated 18.03.2020 passed by the respondent no. 2, learned counsel for the petitioner submits that the samples were drawn by the Excise officials from the CL - 2/wholesale suppliers, which is not under the control of the petitioner, but under the control of some other entity, i.e., wholeseller under the control of Excise Department. She further submits that while drawing the samples, provision of rule 776 of U.P. Excise Manual were not complied with as no person of the distillery, as required under the said Manual, was present.

She further submits that the impugned order was passed on 18.03.2020 and immediately thereafter, on 23.03.2020, the amount of alleged duty and penalty under section 74-A was withdrawn from the advance duty register.

She further submits that a sum of Rs. 1,49,85,677.20 have been withdrawn from the advance duty register. She further submits that under section 11(2) of the Excise Act, revision can be preferred within one month from the date of order before the State Government and while preferring revision, only 25% of the disputed amount was required to be deposited, but in the case in hand, instead of waiting for at least a month from the date of passing of the order, action has been taken hurriedly against the petitioner with ulterior motives and recovered the amount rendering the revision virtually infructuous.

She further submits that the order under section 74-A of the Excise Act was passed without even issuing show cause notice. She further submits that the order of penalty has been passed in clear violation of the principles of natural justice without putting the petitioner to notice or opportunity to submit its reply. She further

submits that against the impugned order dated 18.03.2020, the petitioner filed revision before the State Government raising specific grounds, but by the impugned order not a word has been whispered about the same, which is bad in law.

Rebutting the said submissions, learned ACSC supports the impugned order and submits that on inspection and after drawing the samples, there were shortage beyond the permissible limit and hence, action has rightly been taken.

On the pointed query to the learned ACSC as to whether the provision of rule 776 of the Manual was adhered to and any notice under section 74-A(1) was given before passing the order, after seeking instruction from Shri Arvind Maurya, Assistant Commissioner of Excise posted at Prayagraj Headquarters, he submits that the provision of rule 776 was not complied with in letter and spirit and no notice under section 74-A(1) of the Act was given.

Once the initiation of the proceedings itself is bad, the consequential proceedings automatically fails in the eyes of law.

Matter requires consideration.

Learned ACSC may file counter affidavit within a period of four weeks from today. Rejoinder affidavit, if any, may also be filed one week thereafter.

List immediately thereafter.

It is provided that after deducting 25% of the amount of Rs. 1,49,85,677.20 realized from the petitioner, which is required for filing revision, the remaining amount shall be kept in a fixed term interest bearing account within a week from today in some Nationalized Bank for an initial period of two years renewable from time to time, which shall be subject to the final outcome of the instant writ petition.

The Commissioner of Excise Tax, U.P., Lucknow shall file his personal affidavit within 10 days from today with regard to the compliance of the aforesaid order.

Order Date :- 22.12.2023

Amit Mishra