

आदेश की क्रम सं०
और तारीख
1

आदेश और पदाधिकारी का हस्ताक्षर
2

आदेश पर की गई
कार्रवाई के बारे में
टिप्पणी तारीख सहित
3

Board of Revenue, Bihar, Patna

Board Excise Misc. Case No.- 32 of 2017.

Dist.:- Munger.

PRESENT :- Sunil Kumar Singh, I.A.S.,
Chairman-Cum-Member.

Kundan Kumar - Petitioner/ Appellant

Versus

The Excise Commissioner & Ors - Respondent/ Opp. Party

Appearance :-

For the Petitioner : Sri Ganga Prasad Bimal, Advocate.

For the OP : Sri Shambhu Prasad, G.P.

ORDER

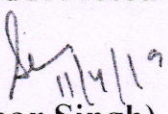
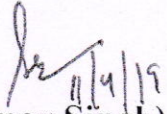
This Misc. Case has been filed by Kundan Kumar, who was settled retail excise composite shop no. 8 and country liquor shop No. 4 and 16 of Group No. 4, for the financial year 2015-16 in the District of Munger, u/s 8 and 39 of the Bihar Excise Act 1915 praying issuance of direction to opposite party to proportionately reduce the license fee and to refund the license fee for the period of 31 days, because the petitioner could not run the shop Since no liquor was supplied by BSBCL, even though permit was provided to him by the authority.

The parties to this case was heard. The petitioner, the learned G.P. on behalf of the O.P. No. 1,2 and 3 and the learned Lawyer for the OP No. 4. BSBCL have filed their respective written statement note of arguments.

Learned Lawyer for the petitioner submitted that in the month of March, 2016 the Superintendent Excise, Munger, issued permit to the petitioner to lift its 1/12th Quota from BSBCL, but BSBCL failed to supply to the petitioner because the stock of BSBCL was NIL, and as such his shop remained closed in the month of March 2016 for 31 days and as such he claims that 1/12th of license fee be ordered to be refunded to him.

11.04.2019

| आदेश की क्रम सं० और तारीख 1 | आदेश और पदाधिकारी का हस्ताक्षर 2 | आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3 |
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| | <p>Learned G.P. appearing on behalf of opposite party No. 1, 2 & 3, has challenged the maintainability of this case, both on law and facts of the case. He has submitted that this application has been filed u/s 8 and 39 of the Bihar Excise Act, 1915. Learned G.P. also pointed out that this petition is neither maintainable u/s 8(3) and nor u/s 39 of the act. Since Section 8(3) provides for filing of appeal for revision before this court. He has submitted that there is no order of either Collector, Divisional Commissioner and Excise Commissioner. Therefore this application is not maintainable u/s 8(3) of the act. He has further submitted that Section 39 of the Act provides that an application for remission can be filed only during continuance of the license. Since this application has been filed after expiry of the license in the year 2017 and therefore he cannot claim any relief under this section.</p> <p>He has further submitted the condition 21 of the License specifically lays down that even in case of non-supply of liquor, no compensation neither reduction in license fee shall be given. The condition of license was accepted by the petitioner and only thereafter agreement was executed and therefore he cannot deny or go against the provision of condition No. 21 of the license. On these grounds, Learned G.P. prays to dismiss the case with exemplary cost, since the petition has been filed with malafide intention and ulterior motive.</p> <p>Learned Lawyer for BSBCL has also challenged the maintainability of this case. He has submitted that this application has been filed under the provisions as contained in Excise Act 1915, which stands repealed by section 98 of Bihar Prohibition and Excise Act, 2016 which come in force w.e.f 01.04.2016. He has further controverted the submission of the petitioner that he was not supplied liquor for whole of the month of March, 2016. He has filed petition on affidavit that sufficient stock was available on 12.03.2016 and has supported his submission by documents to prove that BSBCL was supplied 13833 bottles of country made liquor on 12.03.2016. The petitioner was duly informed by the authorities as to available stock, but the petitioner did not lift his quota deliberately</p> | |

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| | <p>causing loss to the state because the balance stock laying with BSBCL had be drained out on 01.04.2016.</p> <p>The learned lawyer for the petitioner has levelled allegation against the authorities that the authorities refunded deposit of OP No. 5 SCI India Ltd. being in collusion with it. Learned G.P. files copy of Bank Guarantee given on behalf of S.C.I. India Ltd. confirming deposit of Rs. 1 Corer to controvert the allegation of the petitioner.</p> <p>Heard the learned lawyer for the parties, perused the records.</p> <p>This petition is not maintainable in view of the provisions as contained u/s 39 of the Excise Act. Section 39 reads "<i>The Board may, if it thinks fit, at any time during the period for which any license has been granted, order a reduction of the amount of fees payable in respect thereof during the unexpired portion of the grant</i>".</p> <p>Since this petition has not been filed during the financial year of 2015-16 (Unexpired License period), this application is not maintainable.</p> <p>I find no merit in this application. This Misc. Case is dismissed.</p> <p>Dictated & Corrected</p> <p> (Sunil Kumar Singh) Chairman-cum-Member Board of Revenue, Bihar.</p> <p> (Sunil Kumar Singh) Chairman-cum-Member Board of Revenue, Bihar.</p> | |