

GAHC010007322024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/212/2024

M/S UNITED ENTERPRISES WHOLE WAREHOUSE
A REGISTERED FIRM HAVING ITS OFFICE AT P.S. ROAD, AMOLAPATTY,
NAGAON, ASSAM AND IS REPRESENTED BY SMT. JINU SHARMA BEING
THE LICENCE HOLDER

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, EXCISE
DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER OF EXCISE
ASSAM HOUSEFED COMPLEX
DISPUR
GUWAHATI- 781006
ASSAM

3:SUPERINTENDENT OF EXCISE
GOVERNMENT OF ASSAM
OFFICE OF THE DEPUTY COMMISSIONER
NAGAON
ASSA

Advocate for the Petitioner : MR D DEKA

Advocate for the Respondent : SC, EXCISE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 29.05.2024

Heard Mr. D. Deka, learned counsel for the petitioner. Also heard Mr. I. Borthakur, learned Standing Counsel, Excise, appearing on behalf of the respondents.

2. The instant writ petition is taken up for disposal taking into account that the issue involved in the writ petition is covered by the judgment of this Court dated 09.05.2023, rendered in WP(C) 4575/2021 (*M/s Barak Warehouse Pvt. Ltd. and Anr. Vs. The State of Assam and 2 Ors.*).

3. The facts as could be discerned from the instant writ petition is that the petitioner herein, which is a company incorporated under the provisions of the Companies Act, 1956, was issued a licence for carrying out its business as a bonded warehouse in terms of the Assam Bonded Warehouse Rules, 1965. However, prior to coming into effect of the Assam Excise Act, 2000 (hereinafter referred to as "Act of 2000") and change of the definition of "bonded warehouse", an issue arose as to how the transitional stocks would be treated.

4. This Court finds it relevant to take note that in terms of the Assam Excise Rules, 2016 (for short "the Rules of 2016"), the term "bonded warehouse" as defined in Rule 1(A)(xvi) meant the premises or any part of the premises within a manufactory and/or within a canteen store depot warehouse approved and licensed for deposit or storage of spirits on which duty had not been paid. On the other hand, Rule 1(A) (xvii) defined "wholesale warehouse" to mean those premises or any part of the premises approved and licensed for deposit or

storage of spirits on which duty/levy had been paid and from where Indian Made Foreign Liquor (IMFL) may be supplied by wholesale. By this change to the definition of "bonded warehouses" in terms with Rule I(A)(xvi) of the Rules of 2016, there was a stipulation that the bonded warehouse should be situated within the manufactory. However, as the petitioner's bonded warehouse was not situated within the manufactory, the petitioner's bonded warehouse came within the meaning of "wholesale warehouse".

5. Taking into account the said change in the definition of "bonded warehouse" and "wholesale warehouse", an important issue arose as regards the transitional stocks inasmuch as in "bonded warehouses", the Indian Made Foreign Liquor (IMFL) were stored or deposited without payment of the duty whereas in "wholesale Warehouses" the deposit or storage of IMFL had to be with payment of duty/levy.

6. Under such circumstances, the Governor of Assam passed an order on 29.08.2016. A perusal of the said order reflects that a joint team was constituted as per the said order who shall take stock of all such transitional taxable under-bond stock of liquor/spirit in the erstwhile bonded warehouse (now wholesale warehouse) as on the date preceding the date of coming into force of the Act of 2000 and the Rules of 2016, including the stock in transit, the value of such stock as per the Book of Accounts and were required to calculate and record the Government levies involved on such stock, including the ad-valorem levy and VAT as per the Rules of 2016 and the Assam VAT Act of 2003, respectively. In the said order, more particularly, at Clause 9, it was mentioned that the Excise establishment posted at the erstwhile bonded warehouses (now wholesale warehouse) shall not be withdrawn till the entire amount of arrear ad-valorem levy and VAT on the transitional taxable under-bond stock of liquor

including the stock in transit is deposited and the licensee concerned shall be liable to reimburse to the Government the salary etc. of such excise establishment till they are withdrawn by the Government on a no-dues certificate issued by the concerned Superintendent of Excise or Deputy Superintendent of Excise and the concerned Superintendent of Taxes. It is on the basis of Clause 9 that an amount of Rs. 41,06,280.00 has been demanded from the petitioner by the respondent No. 3 as arrear establishment charges with effect from January, 2018 to October, 2022, vide demand notice dated 20.12.2022, which the subject matter of challenge in the instant writ proceedings.

7. This Court had, in the judgment rendered in the case of M/s Barak Warehouse Pvt. Ltd. (supra) held that the petitioners therein, who were also similarly situated with the petitioner herein, would be liable to pay establishment charges in terms of Clause 9 of the Order dated 29.08.2016 till payment of the ad-valorem excise duty as well as the VAT on the basis of the orders passed by the authorities in terms with the Clause 3 of the Order dated 29.08.2016.

8. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had duly paid the establishment charges and also there is no dues as regards excise duty as well as VAT and, as such, the imposition made by the impugned demand notice dated 20.12.2022 was contrary to the order dated 29.08.2016. This aspect of the matter, however, cannot be verified by this Court as to whether the petitioner has paid the said amount or not. However, this Court can very well direct the respondent authorities to verify this aspect of the matter. Accordingly, taking into account the judgment passed by this Court in the case of M/s Barak Warehouse Pvt. Ltd. (supra), this Court disposes of the writ petition with the following directions:

(i) The petitioner herein would be liable to pay the establishment charges in terms with Clause 9 of the Order dated 29.08.2016, however, subject to the observations made in the next sub-paragraph.

(ii) This Court grants liberty to the petitioner to produce within 15 days from today before the respondent authorities such documents showing that the petitioner had duly paid the excise duty and VAT in respect to those transitional taxable under-bond stock of liquor including the stock in transit and that there are due certification to that effect by the concerned Superintendent of Excise, or Deputy Superintendent of Excise and the concerned Superintendent of Taxes. In the eventuality the petitioner is able to show such documents in support of its claim, the respondent authorities will duly consider the same and take further steps as required in terms with Clause 9 of the order dated 29.08.2016.

9. This Court had not set aside the impugned demand notice dated 20.12.2022, but stays the said demand notice for a period of 45 (forty-five) days from today thereby enabling the petitioner to produce such documents as stated Paragraph 8(ii) of the instant judgment. It is made clear that the respondents shall duly verify and consider such documents, if so placed within the time so permitted herein above. It is further directed that depending on such verification and consideration, the demand as regards establishment charges be raised and realised.

10. Before concluding, this Court further observes that a perusal of the impugned demand notice dated 20.12.2022, it is seen that there is no mention whatsoever as to how the respondent authorities have computed the imposition of establishment charges. The respondent authorities issuing the demand notice ought to have been clearer in that regard inasmuch as the person paying the

establishment charges have a right to know what he/she is paying for. This Court therefore directs the Superintendent of Excise to provide to the petitioner within 10 days from the date of submission of the certified copy of this order, the computation on the basis of which the impugned demand notice was issued.

11. This Court for clarity purpose observes that if the petitioner fails to do the needful in terms with the liberty granted in paragraph 8(ii) above, the respondent authorities shall proceed with the realisation, however, shall provide the computation as directed above.

12. With the above observations and directions the writ petition stands disposed off.

JUDGE

Comparing Assistant