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EXCISE DEPARTMENT

ORDER

The 28th April 2005

S. R. O. No. 264/2005—In exercise of the powers conferred by sub-section (2) of Section 29 of the Bihar and Orissa Excise Act, 1915 (No. 2 of 1915), the State Government do hereby make the following amendments to the Order of the Government of Orissa in the erstwhile Revenue and Excise Department No. 671—Ex-20/90 (Pt. II)-E., dated the 23rd April 1990, published in the extraordinary issue No. 538 of the *Orissa Gazette*, dated the 23rd April 1990, as amended from time to time, namely:—

AMENDMENTS

In the said order, —

1. In clause (i), for the words "auction followed by tender followed by negotiation," the words "inviting applications on fixed monthly consideration money and by draw of lottery" shall be substituted;

2. for clause (ii), the following clause shall be substituted, namely: —

"(ii) On receipt of the notification as in clause (i), the Collector shall issue a notice in Form-'A' appended hereto inviting applications on fixed monthly consideration money as decided by Government for a shop or a group of shops at least seven days before the date of inviting applications for the purpose and shall give wide publicity to the same in such manner as he may consider necessary. The notice shall specify the date and time by and the place at which the applications would be received and the date and time by and the place at which the settlement of shop or group of shops would be held. In the case of more than one applications received, the shops will be settled by way of draw of Lottery.";

3. in clause (iii), for the words "In the notice inviting auction / tender", the words "In the notice inviting applications" shall be substituted;

4. for clause (iv), the following clause shall be substituted, namely: --

"(iv) The applications shall be submitted by each applicant in Form 'B' appended hereto available through the internet (official website www.orissagovt.nic.in) to the Collector of the relevant district alongwith the non-refundable application fee in shape of bank draft to be attached to the said Form and advance consideration money through Bank Draft / Banker's Cheque, proof of solvency and income-tax / sales tax clearance / non-assessment certificate".

5. in clause (v) the words " in the auction hall" shall be substituted by the words "in the place at which the settlement of shop or shops would be held" ;

6. the words " The officer conducting auction", "any bidder / tenderer" and "tender or bid" wherever appear shall respectively be substituted by the words "The officer conducting the settlement", "applicant" and "application";

7. for clause (x), the following shall be substituted, namely: —

"Lottery Procedure: —

- (i) The date and time by which and the place at which the application in the format prescribed hereunder will be filed by the persons desirous of taking part in the settlement of India made foreign liquor 'OFF' shops through lottery shall be fixed and notified by the Collector. A minimum duration of at least seven days shall be given in the Notice inviting applications for lottery and shall give wide publicity of the same in the manner as he consider necessary. These seven days shall be counted from the date of Notice. No application beyond the prescribed duration shall be entertained reached after due date. The application shall be submitted in person or by post.
- (ii) The application together with the up-to-date solvency certificate which must not be less than three times of the amount offered, up-to-date sales tax and income-tax clearance or non-assessment certificate, as the case may be, copy of Permanent Account Number Card issued by the Income-tax Department, Excise no dues certificate from the concerned authority shall be filed by the intending person. Besides a Bank draft of Rs.750 (rupees seven hundred and fifty) only towards non-refundable application fee drawn in favour of the Collector concerned shall also be filed. This apart, copy of voter's identity card or in the absence of the same at least one recent passport size photograph duly attested by a Group 'B' Officer shall be attached to the application. The applicant shall further file an affidavit duly executed before an Executive Magistrate that he has not been convicted in any Criminal case or involved in any Excise case and being tried in any Court of Competent jurisdiction. A court fee stamp of the value as prescribed under the Indian Stamp Act, 1899 (Act No. 2 of 1899) shall be affixed to the application. The amount offered shall be in terms of monthly consideration money and shall not be less or more than the reserve price declared in the notice to be issued by the Collector.

- (iii) Notwithstanding the requirements as in clause (ii), the intending applicant shall also be required to furnish a Bank Draft / Banker's Cheque for an amount equal to three months consideration money, as notified by the Collector in the notice inviting applications for the purpose of lottery. The Bank Draft / Banker's Cheque equal to three months consideration money shall have been drawn from any Nationalised Bank in favour of Collector of the district. The Bank draft of the applicant who will be successful in the lottery will be retained for adjustment towards the advance consideration money payable by the applicant for the year of grant of licence and the Bank Draft / Banker's Cheque submitted by all other applicants to the lottery will be returned / released within 15 days.
- (iv) The Superintendent of Excise, duly assisted by at least one Inspector of Excise, as may be nominated by the Collector, shall thoroughly scrutinise the papers / documents submitted by the applicant and submit his scrutiny report with particulars of applications entered in a register, to the Collector on the day, following the last date of submission of application for lottery.
- (v) The names of applicants whose cases qualify for lottery shall be finalised by the Collector, and the same shall be notified on the District Office Notice Board (and other offices, namely concerned Tahasil, Block, District Rural Development Agency, Municipality, Notified Area Council and at local Government Office of the area where the shop will be settled, if any, allotting a number to each of the eligible applicant which shall correspond to the serial number of the register, as maintained in the district office. The date, time and place of drawal of lottery shall be published by the Collector in the said notice for information of all eligible applicants.
- (vi) On the third day i.e. two days after the last date fixed for filing of application for lottery, the Collector shall draw the lottery in presence of the applicants or their authorised agents. The lottery shall be drawn for each shop or group of shops, as the case may be. The Collector puts the tokens containing the names and the number allotted to each applicant into a box and then stir the same for some time. The Collector shall then draw a token from the box and declare the name of the lottery winner. Where there is only one application, the Collector shall declare the name of the applicant to be the winner of the lottery.
- The winner of the lottery shall then be required to append his signature in the Register of the Settlement, Register of Undertaking for lifting of minimum guaranteed quantity, in presence of the Collector.
- (vii) The Collector shall take steps to issue the licence forthwith to the winner of the lottery by realising the Consideration money for the period of the month in which the licence is granted.
- (viii) If the applicant after being successful in the lottery declines or refuses or wilfully omits to take licence the amount tendered by him through Bank Draft / Banker's Cheque

shall stand forfeited to the State Government and he shall further be liable for any loss that may accrue to the State Government on account of delay in settlement of the shop or group of shops. He or his family members or his associates will not be permitted to take part in the settlement of that shop or any other shops in the District for three years including the year of his default.

(ix) The decision of the Excise Commissioner relating to any dispute on account of lottery in the District level shall be final which shall be binding on all the applicants to the lottery."

8. clause (xi) to clause (xiv) shall be deleted;

9. for the words "the date on which it is published in the Official Gazette" appearing in para (2) the words "the 1st day of April, 2005" shall be substituted; and

10. for Form 'A' and 'B', the following Forms shall be substituted, namely: —

FORM-'A'

NOTICE INVITING APPLICATIONS FOR SETTLEMENT OF I.M.F.L. OFF SHOPS THROUGH LOTTERY FOR THE YEAR.....

[See clause (ii)]

1. The consideration money for exercising the exclusive privilege for retail sale of India made foreign liquor (OFF) in the district of _____ will be determined through "inviting applications on fixed consideration money and by draw of lottery" in accordance with the order issued under sub-section(2) of Section 29 of the Bihar and Orissa Excise Act, 1915 (No. 2 of 1915) (hereinafter called as Act) as for the time being in force and applicable, on _____ (date), at _____ (time) _____ (place).
2. The Exclusive Privilege to be so granted will confer the right to open a shop in the locality named in the list. The list of the localities where the shops are sought to be opened with their monthly consideration money is annexed herewith.
3. The exclusive privilege shall, without prejudice to any of the provisions of the Act and the rules made thereunder shall be subject to the following conditions:—
 - (i) The consideration money shall payable in the manner specified in the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989, as amended from time to time.
 - (ii) The currency of the licence will commence on _____ on which date the holder of the licence is to open the shop for retail sale of India Made Foreign Liquor. Failure to open the shop as stipulated herein will entail cancellation of licence and recovery of any loss caused to Government, except in case of delay in granting the licence or where any shop is closed under Section 26 of the Act.

- (ii) No compensation shall be paid to the holder of an exclusive privilege for retail sale of India made foreign liquor for closure of his shop on 2nd day of October every year on account of Gandhi Jayanti and also for closure during General Election/by-election to Parliament (Lok Sabha) / State Assembly as per direction of the Election Commission of India and in conformity with the direction of the State Election Commissioner during the election to Grama Panchayat / Panchayat Samiti / Zilla Parishad and Urban Local Bodies.
- (iv) The holder of a licence shall not be entitled to any compensation or to the refund of any consideration money paid or deposits made in respect thereof, in the event of his licence being cancelled or suspended before the expiration of its term under the provisions of Section 42 of the aforesaid Act.
- (v) A shop once starts operating in its sanctioned locality shall not ordinarily be removed. However shifting of a shop to any site other than the sanctioned locality for any special reasons shall be subject to the approval of the Excise Commissioner.
- (vi) The holder of the licence shall abide by the provisions of the Act and of the Rules and Orders made thereunder.
- (vii) The State Government will not be responsible for providing the place for location of shops. It will be the responsibility of the privilege holder to arrange suitable place and carry on the privilege granted to him. The place so arranged shall be free from objection from the Public.
- (viii) The exclusive privilege once granted shall continue for a period of three years including the year of grant, unless and otherwise directed by the Government. The exclusive privilege holder shall renew his licence on terms and conditions generally prescribed for all by the State Government from year to year till completion of three years. Willful omission to renew the licence for a shop or group of shops in terms and conditions generally prescribed for all will not allow the exclusive privilege holder or his family members or his associates to take part in subsequent settlement of the shop or any other shops till completion of three years including the year of grant.
- (ix) No licence shall be granted to any person who is of doubtful solvency or who is known to be involved in spurious liquor trade, or who has been facing a trial in any Criminal Court under the Act or who has been charged of a non-bailable offence under the provisions of Indian Penal Code, 1860 (Act No. XLV of 1860) or who is a defaulter in terms of Rule 45 of the Orissa Excise Rules, 1965 or in terms of Rule 102 (A) of Board's Excise Rules, 1965.
- (x) The State Government reserve the right to refuse grant of exclusive privilege without assigning any reason thereof and settle the privilege before expiry of three years in the manner as may be directed by the State Government from time to time.

(xi) The Lottery shall be held subject to the following conditions:—

- (a) The person (s) intending to take part in the lottery shall submit application(s) to the Collector in the format prescribed herewith.
- (b) The application as in Form 'B' shall be accompanied with the up-to-date solvency certificate, up-to-date sales tax, income-tax clearance or non-assessment certificate, as the case may be, copy of Permanent Account Number Card, Excise No dues certificate and a Bank draft of Rs.750 towards non-refundable application fee drawn in favour of the Collector concerned besides the requisite Court fee of the value as prescribed under the Indian Stamp Act, 1899.
- (c) The applicant shall also enclose a copy of voter's identity card or in the absence of the same a copy of recent passport size photograph.
- (d) An affidavit duly executed by the applicant before an Executive Magistrate to the effect that the applicant has not been convicted in any Criminal case or being tried in any Court of Competent jurisdiction shall also be enclosed to the application.
- (e) A Bank Draft equal to three months consideration money as notified herewith in the list of shops shall be submitted by the applicant alongwith other documents, as aforesaid. The Bank Draft of the winner of lottery shall be adjusted towards the advance for the shop payable by the applicant and in all other cases, the same will be returned / released after the lottery is over.
- (f) The amount offered shall be in terms of monthly consideration money and shall not be less or more than the monthly consideration money declared in the notice.
- (g) The application shall be filed by intending applicants on or before _____ in the Office of the _____ and no application shall be entertained thereafter.
- (h) Prior to one day before the date of drawal of lottery, the list of persons whose applications qualify for consideration in the lottery shall be notified in the District Office Notice Board.
- (i) At least after two days of the last day fixed for filing of applications, the lottery will be drawn by the Collector, who shall declare the name (s) of the winner (s) of lottery. If there is but only one application for any shop or group of shops, the Collector shall declare the name of such applicant to be the winner of the lottery. The applicant (s) or their authorised agents may remain present at the time of drawal of lottery.
- (j) After the declaration of lottery, the applicant shall be required to put his signature in the Register of Settlement, Register of undertaking to lift the monthly minimum guaranteed quantity as determined for the shop on the basis of the monthly

consideration money which is now 22 London proof litre of India made foreign liquor and 33 bulk litre of Beer per one thousand rupees of consideration money. This ratio for fixation of minimum guaranteed quantity may undergo any change as may be decided by the Government from time to time.

- (k) The winner of the lottery will be issued with a licence for the shop or group of shops, as the case may be, on payment of consideration money for the period of the month in which the licence is granted. The advance for three months tendered by him in shape of Bank Draft shall be adjusted for the last three months of the period of grant.
- (l) If the applicant after being successful in the lottery declines or refuses or willfully omits to take licence on some plea or other, the amount tendered by him through Bank draft shall be forfeited to the State Government and he shall be further liable for any loss that may accrue to the Government on account of delay in settlement of the shop or group of shops. He or his family members or his associates will not be permitted to take part in the settlement of that shop/group of shops or any shop for three years including the year of his default.
- (m) If no application is received, the Collector may notify another date for filing of applications. So also, if the last date for filing of application or the date fixed for drawal of lottery is declared as a holiday for any special reason or for any unavoidable contingency, the Collector shall reserve the right to defer the date to some other suitable date by issuing notice to the effect. Such lottery will be held subject to terms and conditions, as notified herewith.
- (n) The decision of the Excise Commissioner relating to any dispute on account of lottery in the District level shall be final which shall be binding on all the applicants to the lottery.

Place
Date

Collector

FORM 'B'

APPLICATION FOR GRANT OF LICENCE OF INDIA MADE FOREIGN LIQUOR 'OFF'
SHOP / SHOPS THROUGH LOTTERY SYSTEM

[See clause (iv)]

1. Name of the applicant with father's name.
2. Permanent address in full
3. Present postal address
4. Shop/Group of shops for which application is made.

Place for affixing
photograph

5. Locality of the shop
(or each shop in case group of shops
is sought to be opened).
6. Solvency Amount (Solvency Certificate No. &
Date, Issuing Authority. The original Certificate
be enclosed).
7. Sales Tax Clearance/Non-assessment Certificate
(No. & date, issuing authority) (Attested copy to be
enclosed).
8. Income-Tax Clearance Certificate or PAN Card
No. (duly attested to be enclosed).
9. Excise no dues Certificate (to be enclosed in original)
10. Monthly Consideration Money of the shop (s)
11. Affidavit executed before the Executive Magistrate
(in original).
12. Original Bank Draft showing deposit of Rs.750
towards application fee.
13. Bank Draft/Banker's Cheque in original showing
deposit of three months consideration money—
(a) Amount
(b) Name of the Bank
(c) Bank Draft/Banker's Cheque No. & Date
14. Declaration—

Certified that the information furnished above are true to the best of my knowledge and belief.

2. Certified that I shall abide by all the conditions of licence, Excise Act and Rule, Notification, Orders issued and which may issue in future, if the licence is granted in my favour.

Signature of the applicant".

[No. 2914]

By order of the Governor

A. K. SAMANTARAY

Principal Secretary to Government