

# IN THE HIGH COURT OF SIKKIM

## CIVIL JURISDICTION

WP (C) No. 33 of 20<sup>11</sup>

M/S UFLEX LIMITED.

~~Appellants (s)~~  
Petitioner ~~(s)~~

Versus

STATE OF SIKKIM & ORS.

Respondent (s)  
~~Opposite party (s)~~

~~Appellant~~

For \_\_\_\_\_  
Petitioner  
(Advocate (s))

MR. JORGAY NAMKA , MS. ZOLA MEGI, MS. DENKILA  
BHUTIA AND MS. RINKU SERAPHINA CHETTRI

Respondent


For \_\_\_\_\_  
~~Opposite Party~~  
(Advocate (s))

MR. J.B.PRADHAN, ADDL. ADVOCATE GENERAL WITH  
MR. KARMA THINLAY, GOVT. ADVOCATE AND  
MR. S.K.CHETTRI, ASTT. GOVT. ADVOCATE FOR RESP. NO. 2

Serial No.	Date	Order (s) with Signature (s)
1	2	3
01.	28.07.11	<p style="text-align: center;"><b>BEFORE</b></p> <p style="text-align: center;"><b>HON'BLE MR. JUSTICE S.P. WANGDI, JUDGE</b></p> <p>Present: Mr. Jorgay Namka, Ms. Zola Megi, Advocates for the petitioner.</p> <p>Mr. J.B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay, Govt. Advocate and Mr. S.K. Chettri, Asstt. Govt. Advocate for respondent No.2.</p> <p style="text-align: center;">----</p> <p>Heard Mr. Jorgay Namka, learned counsel appearing on behalf of the petitioner and also heard Mr.J.B. Pradhan, learned Addl. Advocate General appearing on behalf of the State respondents.</p>

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		<p>The case of the petitioner in short is that the petitioner had entered into an agreement with the State respondents for supply of security holograms for liquor products manufactured in the State of Sikkim by an agreement dated 05-07-2010 under agreed terms and conditions. The three conditions of relevance for the purpose of the present proceedings are stated to be Clause 4 containing the tenure of contract which prescribes that the agreement shall be for three years subject to renewal annually, Clause 7 providing for the price of the holograms which as per the petitioner was arrived at Rs.0.90 paise per hologram after negotiations before entering into the contract and, Clause 10 providing for the termination of the agreement prescribing specific conditions on which the contract could be rescinded.</p> <p>The learned counsel for the petitioner submits that the respondents in violation of this agreement issued the impugned order No.665/Excise(Abk) dated 04-07-2011, marked Annexure P-8 conveying that they were unable to renew the contract on the ground that issues in respect of price and quality could not be resolved.</p> <p>It is further submitted that before issuance of the impugned order, a meeting had been held with the</p>

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1	2	3
		<p>respondents in which the manufacturers and the General Manager for the petitioner were present when the issues with regard to fixation of price of holograms were discussed but not in respect of its quality. It is, therefore, submitted that the refusal on the part of the respondents to renew the license in terms of letter Annexure P-8 was unfair, unreasonable and dehors the agreement Annexure P-8 and liable to be quashed.</p> <p>Mr. J.B. Pradhan, learned Addl. Advocate General on the other hand, submits that the action taken by the State respondents was permissible in law and in accordance with the object behind the renewal clause. There was no mala fide in the action and in this context, the petitioner had submitted a letter dated 10-06-2011 whereby he had refused to reduce the price to Rs.0.30 paise and other allied costs. Having received instructions from Mrs. B. Chettri, Additional Excise Commissioner of the respondent Department who is also present in Court, the learned Addl. Advocate General submits that as per the record the latest rate offered by other parties and agreed to by the respondent Department is Rs.0.23 paise.</p> <p>Having heard the learned counsels, I am of the considered view that before denying the petitioner</p>

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		<p>renewal of the agreement, he ought to have been given an opportunity to match the lowest price as informed by the learned Addl. Advocate General in view of the subsisting agreement with him. On being asked by this Court, the learned Counsel submits that the petitioner is ready and agreeable to match the lowest rate stated by the respondents, if given an opportunity.</p> <p>The learned Addl. Advocate General fairly submits that if the petitioner approaches the Department with the offer, it shall be duly considered. Under such circumstances, the petitioner is directed to approach the Department with his offer within two weeks and the respondent upon receipt of the offer shall take a decision within a period of two weeks thereafter.</p> <p>With the above directions, the Writ Petition stands disposed of. Needless to state that the petitioner shall be at liberty to move this Court in the event of his dissatisfaction, if so advised.</p> <p>No order as to cost.</p> <div style="text-align: right;">               Judge              28-07-2011         </div>