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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 8765/2015**

GLOBUS SPIRITS LTD ..... Petitioner
Through: Ms. Rana Parveen Siddiqui, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents
Through: Mr. Satytakam, ASC

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% **01.05.2017**

CM No.16407/2017

1. For the reasons stated, the application is allowed. The writ petition is restored to its original number.

CM No.16408/2017

2. Allowed, subject to all just exceptions.

WP(C) No.8765/2015

3. The prayers in this writ petition, filed on 24th August, 2015, read as under:

> *"a. quash the impugned order dt. 30.10.2012 and 28.05.2013 passed by Respondent No.2 levying excise duty without the authority of law and without following the principles of natural justice;*
>
> *b. allow the refund of a sum of Rs.28,57,368.00 collected by the*

Respondent using coercive method along with a sum of Rs.1,86,926.00, with interest @12% per annum from the date of deposit, i.e. 09.05.2012 till the amount is refunded;

c. allow the destruction of the unsalable stock of liquor which is unfit for human consumption, or its re-export, without payment of duty"

4. A question was posed to learned counsel for the Petitioner, whether the orders mentioned in prayer (a) above are appealable under Section 72 of the Delhi Excise Act, 2008 ('Act'). Although learned counsel answered the question in the affirmative, she submitted that since both the orders were without jurisdiction, the Petitioner has approached this Court by way of the present writ petition. A further question was posed as regards the time taken for the Petitioner to approach this Court, i.e., nearly three years after the order dated 30th August, 2012 and more than two years after the order dated 28th May, 2013 was passed. While giving no satisfactory explanation to these questions, learned counsel for the Petitioner stated that the Petitioner had been making 'representations' to the Excise Department of the Government of National Capital Territory of Delhi.

5. In the considered view of the Court, neither of the above explanations is satisfactory. Nothing prevented the Petitioner from challenging the impugned orders by way of an appeal under Section 72 of the Act in good time, if the Petitioner was of the view that they were without jurisdiction. Further, the mere making of a 'representation' to the Department will not extend the period of limitation for filing an appeal. This is not a case where the Court should exercise its discretionary jurisdiction under Article 226 of

the Constitution.

6. The Court, therefore, is not satisfied that there is any justification for the Petitioner to directly approach this Court under Article 226 of the Constitution of India. If the Petitioner chooses to avail of the statutory remedy, the authority concerned will deal with the issue of limitation in accordance with law.

7. The writ petition is dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 01, 2017
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