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

+ **W.P.(C) 3130/2020 & CM APPL.10874/2020**

ABHISHEK GARG

..... Petitioner

Through: Mr. Onkar with Mr. Harsh Makhija &
Mr. Arjyadeep Roy, Advs. along with
petitioner-in-person.

versus

**GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI AND OTHERS**

..... Respondents

Through: Mr. Ramesh Singh, Standing Counsel,
Mr. Dhananjaya Mishra, ASC,
Mr. Gautam Narayan, ASC and
Ms. Bhawna Kataria, Adv. for
GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.06.2020

Proceedings of the matter have been conducted through video conferencing.

W.P.(C) 3130/2020

1. This petition has been preferred with the following prayers:-

“a) Grant an ad-interim ex-parte stay against the operation of the Notification No. F.3(2)/Fin.(Rev-1)/ 2020-21/ DS-VI/ 150 dated 04.05.2020 and also against the operation of the Order bearing No. F. No. 5/ IMFL/ EX/ 2020-21/ 415-430 dated 04.05.2020, issued for implementing the afore-stated

Notification, during the pendency of the writ petition;

b) Issue a writ of certiorari or any other order or direction to declare the Notification No. F.3(2)/ Fin.(Rev-1)/ 2020-21/ DS-VI/ 150 dated 04.05.2020 and the Order bearing No. F. No. 5/ IMFL/ EX/ 2020-21/ 415-430 dated 04.05.2020, issued for implementing the aforesaid Notification, as ultra vires Section 2(52), Section 26, Section 27 and Section 81 of the Delhi Excise Act, 2009 AND;

c) Pass such other orders or grant such other reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

2. Before the learned counsel appearing for the petitioner starts his argument, it is fairly submitted by the learned Standing Counsel appearing for the respondent – Government of NCT of Delhi that vide fresh notification dated 09.06.2020 the earlier notification dated 04.05.2020 which is under challenge in this writ petition has been withdrawn and therefore nothing survive in this petition for adjudication.

3. However, learned counsel for the petitioner submitted that this writ petition still survive for the academic purpose so far as to question, whether the respondent had power, jurisdiction and authority to impose and levy Special Corona Fee on the MRP of liquor. Therefore, it submitted by the learned counsel for the petitioner that this aspect of the matter may be decided by this Court.

4. Keeping in view that the impugned notification dated 04.05.2020 has already been withdrawn by the Government of NCT of Delhi vide fresh notification dated 09.06.2020, we are not at all inclined to entertain this writ

petition only for the academic purpose. The Hon'ble Supreme Court in **Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi**; 1987 (Supp) SCC 93 observed as under:-

“4. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in Sun Life Assurance Co. of Canada v. Jervis, 1944 AC 111 observed:

I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties to a matter in actual controversy which the House undertakes to decide as a living issue.

These observations are relevant in exercising the appellate jurisdiction of this Court.”

(emphasis supplied)

5. Question of law as raised in this petition shall be dealt with by this court in appropriate proceedings. However, if the petitioner is interested in recovery of the excess amount paid consequent to the notification dated 04.05.2020, he is at liberty to file a Civil Suit for recovery of the amount in accordance with law before the appropriate forum/court.

6. With these observations, this writ petition is hereby disposed of.

CM APPL.10874/2020

In view of the aforesaid order on the main petition, no further orders are required to be passed on this application. The same stands disposed of accordingly.

CHIEF JUSTICE

PRATEEK JALAN, J

JUNE 19, 2020
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