$~51
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 13.12.2022

\+ W.P.(C) 12511/2022 and CM APPL.37801/2022, 52325/2022, & 52659/2022

BRINDCO SALES PVT. LTD. ..... Petitioner

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner	:	Ms. Simran Brar, Mr. Vandanta Varma and Ms. Kiran Devrani, Advocates
For the Respondents	:	Mr. Santosh Kumar Tripathi, Standing Counsel (Civil), GNCTD with Mr. Arun Panwar and Mr. Tapesh Raghav, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. By way of present petition, the petitioner challenges rejection of the revalidation of the import permit no. IP-230522016308 and import permit no. IP-230522016311 both dated 23.05.2022 issued by the respondents for import of liquor stock vide office order dated 03.09.2022 read with Delhi Excise Rules, 2010. The petitioner seeks revalidation as also to make an inventory of the goods which were permitted to be offloaded into the bonded

warehouse for onward sale as permitted under Delhi Excise Act, 2009 read with the rules made thereunder.

2. The facts germane to the dispute are very narrow, and therefore, the Court is refraining from going into the detailed facts as narrated in the writ petition.

3. According to the petitioner, the original IP i.e. Import Permit Nos.IPN230522016308 and IPN230522016311 were issued on 23.05.2022 for a period of 9 days expiring on 31.05.2022. Subsequently, on 26.05.2022, the aforesaid IPs were extended automatically with effect from 23.05.2022 through till 04.06.2022. This extension makes it total for a period of 13 days. Thereafter, on the expiry of the aforesaid IPs, the petitioner made a request for revalidation (in the submission of the petitioner first revalidation) to be granted from 19.07.2022 to 31.07.2022. However, the portal automatically renewed for only 9 days instead of 13 days which is with effect from 19.07.2022 through till 27.02.2022 on payment of a composite fee at highest which is 25%.

4. Ms. Brar, learned counsel appearing for the petitioner, submits that Rule 18 of the Delhi Excise Rules, 2010 governs the revalidation of the import permit and submits that the provisions of the Rule 18 do not limit the number of times revalidation can be sought or be granted by the Deputy Commissioner. She also submits that even as per Office Order dated 03.09.2019 issued by the Government of NCT of Delhi, revalidation can be sought twice on the payment of composite fee.

5. Learned counsel for the petitioner submits that subsequent to the

expiry of the original permit, the revalidation which was granted on 26.05.2022, was automatically revalidated from 31.05.2022 through till 04.06.2022. She lays emphasis on the fact that this automatic revalidation was done by the system for a period of 13 days. She submits that this cannot be considered as revalidation since it fell during the period of validity of the original Import Permit.

6. Learned counsel for the petitioner further submits that as per the petitioner, first revalidation was sought on 19.07.2022 whereby the petitioner had paid the requisite composition fee at the highest rate of 25% in accordance with the office order dated 03.09.2022. However, revalidation was granted only for 9 days from 19.07.2022 through till 27.07.2022 which is a period of 9 days instead of 13 days.

7. Learned counsel submits that to rectify the situation, the petitioner sought revalidation *vide* the application dated 30-31.07.2022 and simultaneously attempted to deposit the composition fee. However, the application for revalidation was rejected and the portal was closed disabling the petitioner from depositing the composition fee.

8. It is this rejection of validation sought *vide* the application dated 30-31.07.2022, which is the subject matter of the present petition.

9. Per Contra, learned counsel Mr. Panwar appearing for the respondents draws attention of the Court to the counter affidavit as filed by the respondents in answer to the present writ petition. On page 3 of the counter affidavit, the relevant portion of the Cabinet decision held on 30.07.2019 has been extracted.

10. He places reliance on the aforesaid decision of the Cabinet where import permit revalidation was decided not to be allowed for more than two times. Learned counsel further drew attention of the Court to page 4 of the counter affidavit where the table in respect of the Composition Fee for extending the validation of the import permit has been brought out to submit that the decision to limit request for revalidation to two times has been acted upon.

11. On that basis, Mr. Panwar submits that the petitioner having availed of such request two times previously could not have sought a third request for revalidation submitted on 30/31.07.2022. Learned counsel refers to Sub Section (a) of Section 4 of Delhi Excise Act, 2009 to submit that the Commissioner under the Act is permitted to regulate, control, monitor, manufacture, possession import, export, transport and sale and consumption of liquor and other intoxicants suggesting that the Cabinet decision and the subsequent office order is in conjunction with the powers exercised by the Commissioner under Section 4 of Delhi Excise Act, 2009.

12. With respect to Rule 18 of the Delhi Excise Rules, 2010, Mr. Panwar submits that though the provision prescribed no limitation to the number of times a person can apply for revalidation, however, submits that Section 4 (a) of the Delhi Excise Act read with the Office Order dated 03.09.2019 has limited the scope of Rule 18 to the number of times revalidation can be sought in accordance with the Cabinet Decision. As such, learned counsel for the respondents submits that there is no illegality committed by the respondents in refusing the revalidation which in his submission is the third attempt and not permissible.

13. This Court has considered the rival contentions and also taken into account the provisions of the Delhi Excise Act as well as Rule 18 of the Delhi Excise Rules, 2010. The facts as submitted are not disputed by either of the parties. What is to be considered by this Court is that whether revalidation sought by the petitioner on 30/31.07.2022 is within the permissible number of attempts that the petitioner could have made under Rule 18 read with Office Order dated 03.09.2019.

14. It is not in dispute that original import permit was granted for a period of 9 days instead of 13 days as sought by the petitioner on 23.05.2022. This was done so, since the liquor policy was expiring on 31.05.2022 and therefore, could not have been extended beyond 31.05.2022. However, it is also not disputed that the liquor policy in force on that day was extended for a further period of two months i.e. till 31.07.2022.

15. Accordingly, the petitioner also renewed its liquor licence by paying the requisite fee as per the rules till 31.07.2022, which is not disputed by the learned counsel appearing for the respondents. It appears that the import permit was extended automatically, which is not disputed, w.e.f. 31.05.2022 to 04.06.2022 on 26.05.2022, possibly in accordance with the decision to extend the liquor policy upto 31.07.2022. It is apparent that the government extended the import permit automatically via the portal on its own volition. It is further undisputed that the said automatic revalidation was granted for a period of 13 days.

16. It is undisputed that the petitioner had also sought revalidation on 19.07.2022, after depositing the composition fee which was granted from

19.07.2022 through till 27.07.2022. The said revalidation was given only for 9 days instead of 13 days as was sought by the petitioner. Since the period of 4 days was not granted to the petitioner, the trouble or grievances of not being able to offload its goods beyond 27.07.2022 was sought to be corrected by attempting to make another request on 30/31.07.2022.

17. This application for revalidation was rejected by the respondent on the ground that it was violative of the Office Order dated 03.09.2019. The revalidation done by the portal on 26.05.2022 granting revalidation of import permit from 31.05.2022 through till 04.06.2022 was done automatically by the portal itself given the fact that the liquor policy was extended uptil 31.07.2022. This automatic extension obviously could not have been considered as an application seeking revalidation of import permit on behalf of the petitioner and therefore could not have been counted towards the number of requests granted under the Office Order. Yet another reason to reach this conclusion is the fact that for this period, the respondent did not charge any composition fee from the petitioner.

18. Having regard to the fact that this Court has reached the conclusion that revalidation granted automatically on 26.05.2022 is not attributable to the petitioner, the revalidation as sought on 30/31.07.2022 would automatically fall within the permissible number of requests as per Office Order dated 03.09.2019 and considering from that point of view, the respondents could not have denied revalidation of the Import Permits.

19. No doubt, the petitioner has not challenged the validity or otherwise of the Office Order dated 03.09.2019, however, having regard to the

aforesaid reasoning, the requirement to do so does not arise in the present case. This is for the reason that whether this Court considers revalidation sought on 30/31.07.2022 as the first or the second request either way it would fall within the purview of office order dated 03.09.2019.

20. Looked at from any which way, the rejection of request for renewal is arbitrary and not sustainable in law. In that view of the matter, the rejection is quashed.

21. In view of the above, the respondents are directed to revalidate the import permit no. IP-230522016308 and import permit no.IP-230522016311 both dated 23.05.2022 for a maximum permissible period subject to payment of the highest of the composition fee in accordance with office order dated 03.09.2019. The respondents are directed to make an inventory of the two consignments offloaded into the bonded warehouse and to treat them as left over stock of the licensing year 2021 – 2022 and permit onward sale in accordance with the Delhi Excise Act, 2009 and Rules, 2010 made thereunder.

22. The aforesaid exercise may be carried out in accordance with judgment of this Court dated 07.12.2022 in ***Writ Petition No.16485/2022 titled as Anheuser Busch Inbev India Ltd vs. Govt. Of NCT of Delhi & Ors.***

23. In view of the above, this writ petition is disposed of with no order as to costs. The aforesaid exercise may be carried out within a period of four days from the date of receipt of the order.

24. All pending applications also stand disposed of.

25. Copy of the order be given *dasti* under signature of the Court Master.

TUSHAR RAO GEDELA, J.

DECEMBER 13, 2022
kct/pg