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

Date of Decision: 13th January, 2023

\+ **W.P.(C) 13963/2022**

GWALIOR ALCOBREW PRIVATE LIMITED ..... Petitioner

Through: Mr. Tushar Jarwal, Mr. Rahul Sateeja and Mr. Priyojeet Chatterjee, Advocates. (M:9910044138)

versus

NCT OF DELHI AND ORS ..... Respondent

Through: Mr. Santosh K. Tripathi, Standing Counsel (Civil), GNCTD with Mr. Arun Panwar, Mr. Pradyumn Rao, Mr. Mehak, Mr. Utkarsh Singh and Mr. Tapesh Raghav, Advocates. (M:9818112250)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. In the present petition, the Petitioner seeks refund of Rs.20,52,558/- given by it towards advance payment of excise duty along with refund of import permit fee of Rs.39,699/-.

3. In the year 2016, the Petitioner- Gwalior Alcobrew Private Limited, based in Gwalior, Madhya Pradesh, intended to dispatch 900 cases of Pure Gold Premium brand whisky from Madhya Pradesh to Delhi. It, accordingly, applied for obtaining export permit in Madhya Pradesh and the import permit in Delhi in terms of Delhi Excise Act, 2009 and the Rules framed thereunder. The requisite permits were obtained by the Petitioner after depositing excise duty to the tune of Rs.20,52,558/- and the import permit

fee to the tune of Rs.39,699/-.

4. After obtaining the requisite permits, the Petitioner had put the bar code on the IMFL as mandated under the Delhi Excise Act. Thereafter, the products were dispatched from Gwalior but were intercepted at Dholpur, Rajasthan on 12th October, 2016 by Dholpur Excise circle inspectors and the same were detained. The said seizure, in effect, resulted in the import not being completed and concluded in Delhi.

5. The Petitioner has availed of its remedies *qua* the said illegal interception, which is not the subject matter of this petition.

6. In view of the goods having not been imported to Delhi, the Petitioners made an application dated 10th August, 2019 seeking refund of excise duty and import duty to Respondent No.3. Repeated representations seeking the refund of the excise duty as also the import fee were made by the Petitioner which were, however, not considered. Hence, the present writ petition has been filed seeking following prayers:

> *"a) issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature thereof, directing Respondent No.3 to*
> *refund Rs. 20,52,558.00 along with applicable interest deposited towards advance excise duty against import of IMFL and Rs.39,666,00 along with interest being import permit fee;*
> *b) in the alternative, issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature thereof, directing the Respondent No. 3 to adjust the advance excise duty of Rs. 20,59,558.00 along with interest accrued towards future imports made by the Petitioner and Rs. 39,666,00 along with accrued interest towards future import fee;"*

7. On the last date of hearing i.e., on 27th September, 2022, this Court

had directed as under:

> *"This writ petition has been preferred for directions being framed calling upon the respondents to refund Rs. 20,52,558/- along with interest, the sum representing the Advance Excise Duty which was deposited as well as a sum of Rs. 39,666/- being the amount paid towards import fee.*
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> *The submission of learned counsel for the petitioner was that since the import never fructified, there exists no justification for the respondents to retain the Advance Excise Duty that had been deposited. It is pointed out that the consignment in question had been illegally detained by the excise authorities in Rajasthan which was duly challenged by the petitioner. Once the petitioner succeeded in that challenge, the consignment is stated to have been transported back to Madhya Pradesh. It is in the aforesaid backdrop that the petitioner has approached this Court seeking release/refund as noticed above.*
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> *The Court notes that in support of the prayers that are made, a representation is already stated to have been made to the competent authority in the Excise Department. In view thereof, let the said representation be decided by the respondents and a decision taken thereon be placed on the record of this writ petition on or before the next date fixed.*
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> *List again on 13.01.2023."*

8. Today, ld. Counsel appearing for the Respondents has placed on record the order dated 12th January, 2023 passed by the Deputy Commissioner, Excise, GNCTD vide which the representation for refund has been rejected. The operative portion of the said order reads as under:

> *"As per the legal provisions contained in the Delhi Excise Act 2009, Delhi Excise Rule 2010, and terms & conditions for grant of L-1 License -*

1. The licensee submits an affidavit along with application for issuance of Licence affirming to abide by the Delhi Excise Act 2009, the Delhi Excise Rules 2010, the terms and conditions for grant of L-1 License and any other provisions enacted under these Acts and Rules.

2. The licensee is entitled to import the liquor from the manufacturing state to Delhi after the grant of L-1 licence by the Delhi Excise Department. The licensee is duty bound to import liquor and supply it to the retailers situated in Delhi.

3. The Delhi Excise Department charges excise duty at the time of placing the order for an import permit. Thereafter no additional excise duty is charged by Delhi Excise Department.

4. The transit stock for import into Delhi through a valid import permit is covered by the insurance as this component is also included at the time of fixing the maximum retail price (MRP).

5. The licensee applies for an import permit to the manufacturing unit for the import of liquor to Delhi through Excise Supply Chain Information Management System (ESCIMS) portal of Delhi Excise Department. The import permit is approved automatically on the ESCIMS portal and excise duty and other charges are deducted automatically. If the licensee fails to receive the stock of liquor in their Bonded Warehouse (BWH) within the validity period, this import permit is needed to be revalidated as per the provisions prescribed, through ESCIMS portal.

6. The licensee applies for revalidation of the import permit on the ESCIMS portal, and the revalidation fee is deducted from the portal in accordance to the number of days applied for revalidation.

> ***<u>The action taken by the Excise Department of Rajasthan falls outside the purview of the Excise Department of Delhi and there is no role of Excise Department of Delhi in this matter as there is no provision contained in the Delhi Excise Act, 2009 and Delhi Excise Rule, 2010 for such Refund cases.</u>***
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> *In view of above, the representation of the petitioner for refund of excise duty levied on the import permit bearing no. IPN101016030268 is hereby rejected.*
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> *Further, the petitioner is at liberty to file appeal against this order before Appellate Authority as per Section 72 of the Delhi Excise Act, 2009.*"

9. A perusal of the order, which has also been handed over to ld. Counsel for the Petitioner would show that the rationale and reasoning given by the Respondents is that the Delhi Excise Department charges the excise duty and issues import permit. The importer is covered by insurance. As per the above order, usually, when the import does not take place or stock of liquor is not received, the importer seeks revalidation of the import permit through the portal. The order further states that the action taken by the Rajasthan Excise Department is outside the purview of the Delhi Excise Department. The order finally concludes that there is no provision containing in the Delhi Excise Act and Rules for such refund cases.

10. It is submitted by ld. Counsel for the Respondent that the said order having been passed by the excise authorities, the Petitioner ought to avail of its appellate remedies in accordance with Section 72 of the Delhi Excise Act.

11. On the other hand, ld. Counsel for the Petitioner submits that the writ petition was filed prior to the said order being passed. Since the import did

not take place and there is no provision of law for seeking refund, in such cases, the only remedy would be filing of a writ petition. Ld. Counsel further submits that interest ought to be awarded by Court on the amount deposited by the Petitioner.

12. Heard. On the question of maintainability, this Court is of the opinion that the order has been passed subsequent to the filing of the writ petition. The fact that the goods did not reach Delhi and the fact that excise duty was paid in advance is admitted. A perusal of Section 27 of the Delhi Excise Act shows that excise duty can be levied and collected on intoxicants, which are produced, manufactured, transported or imported into Delhi, at the rates, which are prescribed. Section 27 reads as under:

> *"**27. Excise duty, countervailing duty and special duty-** (1) There shall be levied and collected duty on all intoxicants which are produced, manufactured, transported or **imported into Delhi** at such rates as may be prescribed, not exceeding the rates set forth in the Schedule.*
> *(2) There shall be levied and collected fees for terms, conditions and form of, and duration of, licence, permit and pass.*
> *(3) In computing the retail price, notwithstanding anything contained in sub-section (1) of section 27, the duty shall be so increased and computed that the retail price is rounded off up to the next higher multiple of ten rupees, as notified by the Government and such increased duty shall be collected by the Government in the manner prescribed."*

13. The corresponding rule, i.e., Rule 9 of the Delhi Excise Rules, 2010 dealing with payment of duty and fee also creates an embargo that no liquor on which the prescribed duty and fee is not paid can be imported to Delhi. Rules 9 reads as under:

> ***"Payment of duty and fee on import, export and transport of liquor-*** *(1) <u>No liquor on which the prescribed rate of duty and fee have not been paid or a bond has been executed in lieu thereof, may be imported, exported or transported.</u>*
> *(2) Excise Commissioner may allow re-export of Indian Liquor and Country Liquor without payment of duty in special cases for reasons to be recorded."*

14. A conjoint reading of these two provisions clearly shows that in order for the liability of excise duty to be imposed upon the importer, the actual import ought to take place into Delhi. The procedure prescribed under the Act and Rules is for obtaining the import permit prior to exporting from the origin place. It was under such circumstances that the excise duty and import fee was paid by the Petitioner.

15. Since the import, for reasons unconnected with the issue presently before the Court, did not fructify, in the opinion of the Court the liability to pay the excise duty in the present case would not exist in terms of Section 27 of the Delhi Excise Act.

16. The Excise Department itself concedes that there is no provision in the Act or Rule dealing with such refunds. Under such circumstances, this Court directs the Respondents to refund the excise duty and import fee which has been deposited by the Petitioner. The said refund shall be made within a period of 4 weeks from today.

17. On the aspect of the interest, ld. Counsel for the Petitioner relies upon the judgment of the Supreme Court in ***Godavari Sugar Mills Ltd. v. State of Maharashtra [2011] 2 SCR 180*** to contend that where there is no statutory provision dealing with interest, the Court can award interest on equitable ground. The relevant portion of the said judgment reads as under:

> *10. The question as to when and what circumstances, interest could be awarded on belated payment of compensation was considered by this Court in **Union of India v. Parmal Singh (2009) 1 SCC 618**. This Court first referred to the general principle and then the exceptions thereto, as under:*
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>> *When a property is acquired, and law provides for payment of compensation to be determined in the manner specified, ordinarily compensation shall have to be paid at the time of taking possession in pursuance of acquisition. By applying equitable principles, the courts have always awarded interest on the delayed payment of compensation in regard to acquisition of any property....*
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> *The said general principle will not apply in two circumstances. One is where a statute specifies or regulates the interest. In that event, interest will be payable only in terms of the provisions of the statute. The second is where a statute or contract dealing with the acquisition specifically bars or prohibits payment of interest on the compensation amount. In that event, interest will not be awarded.* ***Where the statute is silent about interest, and there is no express bar about payment of interest, any delay in paying compensation or enhanced compensation for acquisition would require award of interest at reasonable rates on equitable grounds.***

18. It is conceded that there is no statutory provision dealing with the grant of the interest in the Delhi Excise Act and Rules framed thereunder. A perusal of the present writ petition would show that the detention by the Rajasthan Excise authorities took place in 2016 and the application for consideration of refund of the Petitioner seeking refund was filed on 10th September, 2019. However, since 2019, apart from filing letters and representations, the Petitioner chose not to approach this Court. The first time the Petitioner has approached the Court was in September, 2022 by way of the present writ petition. The department ought not to be saddled

with the liability of interest, till the Petitioner has approached this Court as there has been considerable delay in the matter.

19. Accordingly, in the facts and circumstances of the present case, interest @ 3% would be liable to be paid from the period when the present petition was filed, i.e., for the period between 1st October, 2022 till the date of payment. Considering the facts, let the payment be made by 1st February 2023. Thus, for the time period between 2016 till 2022, when the writ petition was filed, this Court is of the opinion that the excise authorities were not to be blamed for non-refund, inasmuch as there was no provision under the Act for giving refund. Hence, the authority could not have directed the refund order on its own.

20. The present petition, along with all pending applications, is disposed of in the above terms.

21. No order as to costs.

PRATHIBA M. SINGH
JUDGE

JANUARY 13, 2023/*dk/sk*