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

\+ W.P.(C) 526/2017

ANIL SURI .....Petitioner

Through: Mr. Shellen Kumar Bajaj and Mr. Manak B., Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Tushar Sannu and Ms. Shaoni Das, Advocates for R-1 and R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

<u>O R D E R</u>

% 03.12.2025

1. This hearing has been done through hybrid mode.

2. The present petition under Article 226 of the Constitution of India, 1950, seeks the following prayers: -

> "a. To issue appropriate Writ(s), order (s), direction(s), declaration, declaring the action of the respondent and its order dated 20-12-2016 as illegal, unjustified and in violation of their own rules and regulations.
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> b. To direct the respondent not to charge any amount penalty of RS.1,91,330/- deposited along with the first installment on 20th March, 2016 and Rs.1,91,330/- deposited along with the second installment on 29.9.2016 by the petitioner.
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> c. To direct the respondent to refund the aforesaid amount of penalty on the licence fee along with interest.
>
> d. To direct to pay the cost of the petition.
>
> e. Any other order as this Hon'ble Court deem fit and proper may please be passed in the interest of justice."

3. The petitioner is running two restaurants under the name and style of Capital Grill and CG's under JPS Fine Dining LLP having all requisite licence required for running the said restaurants. The case of the petitioner is that he holds two L-17/L-17F licences for the said restaurants. As per the petitioner, he deposited licence fee through RTGS for the said licences amounting to Rs. 8,98,430.62/- and Rs.6,32,230.62/- for the year 2016-2017 through HDFC bank on 29.02.2016 at 15:46 hours and 15:57 hours. It is further the case of the petitioner that he came to know that the said amounts have not been debited from his account and he wrote a letter on 02.03.2016 to HDFC Bank, Rajouri Garden, to look into the matter as to why the amount was not remitted to respondent's bank on the same day. As per petitioner, HDFC Bank, *vide* letter dated 05.03.2016 informed the petitioner that due to technical error in server both RTGS were returned back due to server problem between inter bank. The petitioner on 02.03.2016 itself, wrote a letter to Deputy Commissioner Excise Department, GNCTD, requesting to waive the penalty charges as he had paid the renewal fee for the aforesaid licences within the stipulated period, however, the same could not be remitted to respondents owing to the inter bank server problem.

4. As per petitioner, no response was received with regard to his request for waiving off the penalty and he *vide* letter dated 21.03.2016, requested the respondents for creation of new Application Reference Numbers (ARNs) and opted for two half yearly instalments as provided in the rules and policy of the respondents. The petitioner remitted licence fee/additional fee for the said ARNs on 29.03.2016. Thereafter, the petitioner requested for waiver of penalty which was included in the amounts paid on 29.03.2016. However, the said request was rejected by respondent No.1 *vide* order dated 01.09.2016.

A review was filed by the petitioner of the aforesaid order on 12.09.2016.

5. Thereafter, the petitioner made a request on 14.09.2016 for amendment in ARN numbers for second instalment because per respondent's rules and policy, there was not any option to deposit licence fee without the penalty. It is the case of the petitioner that he had opted for the payment of license fee in two installments and not the penalty of 25% levied in accordance with the rules and as no decision was taken by the respondents on the aforesaid request for waiver of penalty and the petitioner deposited the licence fee on 29.09.2016 amounting to Rs.4,22,812/- and Rs.6,00,838/- in SBI, IP Estate Branch, including the penalty amount of Rs.1,91,330/- and interest, to save his licences. The petitioner sent a legal notice on 20.10.2016 to the respondents for not accepting the request of the petitioner for refund of 25% penalty charged and for not refunding the said amount as the same was illegally charged in violation of the rules and policies enacted by the respondents. The respondents on 20.12.2026, *vide* the impugned order, informed JPS Fine Dining LLP that the competent authority has not acceded to it's request for waiver of penalty in payment of excise fee.

6. Learned counsel for the petitioner has drawn the attention of this Court towards Rule 41 of Delhi Excise Rules, 2010, to show that the respondent is empowered to condone the delay in payment if there are good and sufficient reasons for delay on payment of additional fee of 25% as prescribed. It is submitted that the petitioner had deposited the amount of licence fee well within the time; however, due to technical error in the banking system which was beyond his control, the amount could not be remitted to the account of the respondents. It is, therefore, submitted that the respondents in such a situation could have exercised its power and the penalty of 25% levied on

license fee may be reimbursed to the petitioner. Reliance has been placed on a judgment dated 28.08.2025 passed by a Division Bench of Hon'ble Rajasthan High Court in ***D.B. Writ Petition No. 7820/2007*** titled as, ***"M/s Winsome Breweries Ltd. v. Board of Revenue for Rajasthan at Ajmer & Ors.",*** to contend that while dealing with the issue of refund, with respect to the amount which was not deposited voluntarily, it was held that the same is to be refunded and no formal application is required in that regard. Copy of this judgment has been handed up in Court today and the same is taken on record.

7. *Per contra,* learned counsel for GNCTD appearing for the respondents submits that Rule 41 of Delhi Excise Rules, 2010, clearly provides that application for renewal of license fee shall be received in the office of Deputy Commissioner before the end of February every year and in case there is delay, additional fee of 25% of the prescribed license fee is payable for admission of the renewal application provided there is sufficient and goods reasons for the same. It is pointed out that the petitioner in order to evade the penalty had created two ARNs on 21.03.2016. It is submitted that *vide* circular dated 05.02.2016 issued by respondent no.1, the license fee for all license holders was prescribed including the last date for renewal fee payment and penalties for delay in payment. It is submitted that Rule 41 provides that Deputy Commissioner may allow the application for renewal of the license on good and sufficient reason for the delay, subject to payment of additional fee of 25% of the prescribed fee as penalty and he has not been vested with power to waive off/refund the penalty amount. Thus, in the present case, the petitioner had deposited the 2nd half yearly installment of excise fee including penalty on 29.03.2016 and the penalty was accordingly imposed in delay in

paying the licence renewal fee as per Rule 41 of the Delhi Excise Rules, 2010.

8. Heard learned counsel for the parties and perused the records.

9. It is the case of the petitioner that the impugned order dated 20.12.2016 has been passed by the respondents in violations of their own Rules and Regulations.

10. Rule 41 of Delhi Excise Rules, 2010, reads as under: -

[1]41. Application for the renewal of licence and permit to be received by February end along with licence fee

All applications for the renewal of licences *except* and permits shall be received in the office of the Deputy Commissioner before the end of February each year along with licence or permit fee, payable for the renewal of licence or permit. In case of delay, the Deputy Commissioner may admit such application before the expiry of the licence or permit, provided that there are good and sufficient reasons for the delay on payment of additional fee of twenty-five percent of the prescribed licence or permit fee:

PROVIDED that the application for renewal of licence or permit including those granted in the month of March may be admitted after the expiry of the licence or permit, if there are good and sufficient *reasons* for the delay on payment of double the amount of licence or permit *fee* payable, and the licence or permit may be renewed with the approval of the Excise Commissioner.

PROVIDED FURTHER that in case of licence in Form L-15/ L-15F, L-16/ L-16F, L-1[7]/ 17F, L-18/L-18F and L-18A/L-18AF, the *licence* fee is payable in two equal installments after completion of all documentary requirements. First installment of 50% of the licence fee should be paid before end of February each year, failing which additional *fee* of 25% of 1st installment shall be payable till 31st March and beyond that double the amount of 1st installment shall be payable. Second installment of remaining balance amount of licence fees should be paid before 30th September each year alongwith interest 12% per annum, failing which double the amount of 2nd installment shall be payable]

11. Perusal of Rule 41 of the Delhi Excise Rules, 2010, shows that in case of delay, the Deputy Commissioner/respondent no. 2 has been vested with power to admit application before the expiry of such license on payment of additional fee of 25 per cent of the prescribed license fee, provided there are good and sufficient reasons for delay. This Rule does not provide for waiver of the additional fee of 25 per cent of prescribed license fee paid for renewal of license. Rule 41 merely provides that the admission of application for

renewal of license by Deputy Commissioner before the expiry of such license is on payment of additional fee of 25 per cent of the prescribed license fee. In fact, no power has been bestowed with Deputy Commissioner, Excise, to waive off the penalty at the time of admission of such delayed application for renewal of licence.

12. It is matter of record that the petitioner made payment of the license fee for his new ARN's on 21.03.2016. The half yearly installment of excise fee including the penalty of Rs.1,91,330/- was paid on 29.03.2016 which was to be paid by the end of February that year. Respondent no. 1 *vide* circular dated 05.02.2016 had prescribed the license fee for all the license holders including the last date for renewal payments and penalties for delay in payment. The respondents in view of the delayed payment of renewal fee for licence by the petitioner had denied his request for waiver of additional fee of 25% of the prescribed licence fee *vide* the impugned order dated 20.12.2016.

13. The claim of the petitioner that the delay in payment of renewal fee for license due to technical failure does not exempt him from statutory obligation. The penalty was imposed on the petitioner for delay in paying the license renewal fee in accordance with Rule 41 of Delhi Excise Rules, 2010. Thus, the waiver of the same is not permissible.

14. Reliance placed by learned counsel for the petitioner on judgment passed by Division Bench of Hon'ble Rajasthan High Court in ***M/s Winsome Breweries Ltd. (supra)*** is misplaced as in the said case, the learned Division Bench was dealing with a situation in which the petitioner therein had stored liquor in excess of stocks and on inspection of the same, the department found that the same was in violation of various excise provisions and suspended the licenses in terms of Section 34 of the Rajasthan Excise Act, 1950. The stock

of the said petitioner was seized and penalty was imposed by learned Excise Commissioner which was assailed by the said petitioner and the same was set aside by Board of Revenue. However, directions were issued by Assistant Excise Officer demanding excise duty on unused stock which was seized for which recovery proceedings were initiated. The petitioner therein being aggrieved by the hindrances caused deposited a sum of Rs.15 Lakhs under protest. It was in these circumstances, the said judgment was passed. It is pertinent to note that, in fact, in this judgment learned Division Bench of Hon'ble Rajasthan High Court in paragraph 22 thereof, had observed as under: -

> "22. ……
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> ****   ****   ****
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> The Court has further held that any claim of refund must necessarily be made in accordance with the statutory provisions applicable to the case, and statutory mechanism prescribed therein cannot be bypassed."

15. It is thus clear that the petitioner was charged with penalty/additional fee of 25% of the prescribed licence fee as he could not make the payment of licence fee within the prescribed period. The petitioner was informed by the respondents *vide* order dated 01.09.2016, with the prior approval of the competent authority, that the penalty was levied for late payment and therefore, no refund can be sanctioned.

16. In view thereof, the action of the respondent *vide* impugned order dated 20.12.2016 informing the petitioner that the competent authority has not acceded to his request for penalty waiver of excise fee is in accordance with law as Rule 41 of the Delhi Excise Rules, 2010, does prescribe for any such

waiver of excise fee at the time of admission of delayed renewal of application for licence. The aforesaid provision does not give any power to the Deputy Commissioner to waive the penalty, and therefore, the impugned order dated 20.12.2016 is not in violation of any Rule or Regulations of the respondents.

17. In view of the aforesaid discussion and in facts and circumstances of the case, the present petition is dismissed and disposed of accordingly.

18. Pending application(s), if any, also stands disposed of.

19. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

DECEMBER 3, 2025/nk/ns