



2025:DHC:6080-DB



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

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Judgment reserved on: 21.07.2025

Judgment pronounced on: 28.07.2025

+ LPA 228/2023, CM APPL. 16249/2023

GOVT OF NCT OF DELHI & ORS.Appellants

Through: Ms. Avni Singh with Mr. Binod,
Section Officer

versus

BAPUNA ALCOBREW PRIVATE LIMITEDRespondent

Through: Mr. Tushar Jarwal, Mr. Rahul Sateja,
Mr. Vikrant A. Maheshwari, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeal has been filed by the Appellants under Clause X of the Letters Patent of the High Court of Judicature at Lahore as applicable to this Court, assailing the correctness of the order dated 13.01.2023 [hereinafter referred to as "Impugned Order"] passed by the Ld. Single Judge in W.P.(C) No. 13963/2022, whereby directions were issued to the Appellants to refund Rs.20,52,558/- to the Respondent, deposited towards the excise duty and Rs.39,666/- deposited as import duty by the Respondent at the time of issuance of



a permit under the Delhi Excise Rules, 2010 [hereinafter referred to as “Rules of 2010”] on the following grounds:-

i. that there is no provision under the Delhi Excise Act, 2009 [hereinafter referred to as “Act of 2009”] and the Rules of 2010 for refund of import duty and license fee. Hence, in the absence of any statutory provision, the direction to refund is illegal;

ii. that the Writ Petition was filed to seek recovery of an amount, the claim for which would have become barred by limitation had the Respondent instituted a civil suit, as the application for refund was made on 10.09.2019, whereas the Writ Petition came to be filed only on 23.09.2022; and

iii. that the Writ Petition was not maintainable as it pertained merely to the recovery of money.

2. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

3. The Respondent, M/s Bapuna Alcobrew Private Limited, formerly operating under the name M/s Gwalior Alcobrew Private Limited, was granted an L-1 License by the Delhi Excise Department in the year 2016 under the provisions of the Act of 2009, Rules of 2010, and the Terms and Conditions for Grant of L-1 License, for carrying on the business of wholesale supply of Indian liquor and to import liquor into Delhi from the manufacturing State. In the year 2016, in order to import a consignment of Indian Made Foreign Liquor [hereinafter referred to as “IMFL”] into Delhi, the Respondent applied for an import permit, which was duly granted. Upon grant of the permit, excise duty and import permit fee were auto-debited from



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the Respondent's ledger through the Excise Supply Chain Information Management System ("ESCIMS") portal system, as per the statutory procedure.

4. Pursuant to the issuance of the import permit bearing No. IPN101016030268, valid from 10.10.2016 to 14.10.2016, the Respondent arranged for the transportation of 900 cases of IMFL from its distillery located in Madhya Pradesh to Delhi. However, while the consignment was in transit, it was intercepted by the Excise Inspector, Dholpur, Rajasthan, and subsequently seized. Although the Deputy Excise Commissioner, Rajasthan, initially passed an order releasing the liquor upon payment of certain dues, which were duly made, it was later discovered that the seized stock had been replaced. Ultimately, on 04.05.2018, the Commissioner of Excise, State of Rajasthan, passed an order acknowledging the lapse on the part of the Excise Inspector. Notably, the consignment never entered the territory of Delhi.

5. Thereafter, the Respondent filed its first application for refund of the excise duty and import permit fee on 10.09.2019, citing the fact that the import permit had expired and the goods never reached Delhi. This was followed by another representation dated 06.09.2022, reiterating the request for refund or adjustment. In view of the inaction on part of the authorities, despite repeated representations, the Respondent approached this Court by filing a Writ Petition being W.P.(C) 3963/2022 captioned *Gwalior Alcobrew Pvt. Ltd. v. NCT of Delhi & Ors.*, seeking refund of the amounts paid. The Appellants even failed to file their reply to the Writ Petition. Vide order dated



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27.09.2022, this Court directed the Excise Department to consider and decide the Respondent's representation and place its decision on record before the next date of hearing. In compliance with the said direction, the Deputy Commissioner (Excise), GNCTD, passed an order dated 12.01.2023 rejecting the refund claim on the ground that there was no provision enabling refund under the Act of 2009 or the Rules of 2010.

6. On the next date of hearing, i.e., 13.01.2023, the learned Single Judge passed the Impugned Order directing the Appellants to refund the excise duty and import permit fee deposited by the Respondent, along with interest @ 3% per annum from the date of filing of the Writ Petition till the date of actual payment.

7. It is evident that the taxable event as per the Act of 2009 occurs only when liquor is imported into Delhi. The Delhi Excise Department is empowered to regulate, control, and monitor manufacture, possession, import, export, transport, sale, and consumption of liquor and other intoxicants within the NCT of Delhi. Under Rule 9 of the Rules of 2010, the Respondent had applied for a permit, which envisaged the payment of excise duty and import permit fee. The Respondent applied for the said import permit through the ESCIMS portal of the Department, and upon grant of the permit, the excise duty and other charges were automatically deducted from the ledger account of the licensee. Accordingly, the amount stood transferred to the Department. As per Section 27 of the Act of 2009, the State is empowered to levy excise duty only on actual import of liquor into Delhi, which in the present case never fructified, as import never



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actually took place.

8. The Rules of 2010 also provides that if the stock does not reach the bonded warehouse within the validity period of the permit, revalidation of the permit must be sought under Rule 18, with composition money being auto-deducted at the time of such revalidation. Thus, the collection and retention of excise duty and permit fee by the Appellants is without authority of law. The power of refund is inherent, because the Appellants are not justified in collecting excise duty and permit fee without the import of liquor into Delhi. The State is equally not entitled to unjust enrichment. It cannot retain the amount unless permissible by law. The doctrine of unjust enrichment is rooted in equity and natural justice and has been defined as “*a benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must take restitution or recompense*”.

9. In light of the undisputed fact that the liquor never entered the territory of Delhi, and therefore no taxable event under the Act of 2009 actually occurred, the Appellants are not legally entitled to retain the excise duty and import permit fee deposited by the Respondent. Retention of such amounts, despite the absence of any actual import, would clearly offend the well-settled principles of restitution and the doctrine of unjust enrichment. As a regulatory body, the State cannot be permitted to retain sums collected without lawful authority, particularly where the benefit was neither intended as a gift nor sanctioned by law.

10. With respect to the cause of action for filing the Writ Petition, it



is evident that the Appellants failed to file a reply in response to the Writ Petition, and the Respondent, after having made due representations without redress, was compelled to file the Writ Petition. The cause of action for filing the Writ Petition thus arose not merely upon the expiry of the import permit, but upon the continuous inaction and, ultimately, the categorical rejection of the refund claim.

11. The order refusing refund was passed by the Deputy Commissioner of Excise on 12.01.2023 during the pendency of the Writ Petition, and pursuant to directions issued by the Court itself on 27.09.2022. It is now well settled that the period of limitation begins to run only when the cause of action for initiating the litigation arises. In this context, the period of limitation, if any, would be computed from the date of the rejection order. In the absence of a reply to the writ petition, it is not appropriate to entertain an abstract plea based on limitation. A bundle of facts constitutes the cause of action, which triggers the commencement of the period of limitation. Hence, we find no substance in the second submission of the Appellants.

12. The last submission of learned counsel for the Appellants, assailing the maintainability of the Writ Petition on the ground that appropriate remedy lay elsewhere, also lacks merit in view of the judgment passed by the Hon'ble Supreme Court in *Godavari Sugar Mills Ltd. v. State of Maharashtra*¹, wherein it was held that a Writ Petition under Article 226 of the Constitution of India is maintainable to seek refund of amounts where the retention is not supported by law, especially when such refund arises as a consequence of setting aside

¹ (2011) 2 SCC 439



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of an administrative or quasi-judicial order. It was further held that where the claim for refund is not purely contractual or private in nature, but involves elements of public law, the Writ Petition would be maintainable.

13. Moreover, in the present case, the refund amount has been ordered along with interest @ 3% per annum from the date of filing of the Writ Petition.

14. In view of the above, and finding no merit in the present Appeal, the same is dismissed. The pending application also stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

JULY 28, 2025/sp/pl