

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 23rd OF MARCH, 2023

WRIT PETITION No. 5029 of 2022

BETWEEN:-

**M/S MOUNT EVEREST BREWERIES LTD. THROUGH ITS
DIRECTOR/AUTHORISED SIGNATORY MR. RANJAN TIBREWAL S/O MR.
VIMAL KUMAR TIBREWAL, AGED 42 YEARS, ADD: BPK STAR TOWER
4TH FLOOR, A.B. ROAD, INDORE (MADHYA PRADESH)**

.....PETITIONER

***(SHRI VASHISTHA NARAYAN DUBEY, LEARNED COUNSEL FOR THE
PETITIONER)***

AND

**THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL
1. SECRETARY DEPARTMENT OF COMMERICAL TAX, VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)**

**2. COMMISSIONER OF COMMERCIAL TAXES, MG ROAD. INDORE
(MADHYA PRADESH)**

**3. DIRECTOR COMMERCIAL TAX PARIKSHETRA-1, COMMERCIAL TAX
APPELLATE AUTHORITY, INDORE (MADHYA PRADESH)**

**4. DIVISIONAL DEPUTY COMMISSIONER COMMERCIAL TAX.
DIVISION-3 INDORE(MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI UMESH GAJANKUSH, ADDNL ADVOCATE GENERAL WITH MS
PRANJALI YAJURVEDI, PANEL LAWYER)***

Reserved on : 20.02.2023

Pronounced on : 23.03.2023

This petition having been heard and reserved for orders coming on for pronouncement this day, Hon'ble Shri Justice S.A. DHARMADHIKARI pronounced the following

ORDER

Heard finally with the consent of both the parties.

In this petition, under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

It is therefore, humbly prayed that this Hon'ble Court may kindly be pleased to allow the writ petition and to issue a writ order or direction to grant the following relief(s):

- (i) Issue writ, order or direction in nature of mandamus or any other suitable writ or direct the Respondents to issue full refund of Rs. 1,10,29,179/- alongwith interest.*
- (ii) Any other relief/direction which this Hon'ble Court may deem fit and proper may kindly be granted to the petitioner.*

The learned counsel for petitioner submitted that earlier the petitioner had filed a petition bearing W.P. No. 8560/2016 seeking quashment of the assessment order issued by the respondents for the assessment year 2012-13 for arbitrarily levy of tax on beer under residual entry under the VAT ACT, 2002(for short VAT ACT hereinafter) at the rate of 13%. The writ petition was decided in favour of the petitioner vide order dated 26.08.2016 and the assessment order was quashed. Thereafter, the respondent/State challenged the order dated 26.08.2016 in SLP No. 2895/2017 before the Apex Court. The Apex

Court vide order dated 17.04.2017 was pleased to uphold the order passed by this Court. Thereafter, the petitioner send number of reminders to the respondent requesting them to refund the amount which was collected from the petitioner. Since the amount was not refunded , the petitioner had no other option, but to approach this Court by filing the instant writ petition.

Learned counsel further submits that inspite of the order dated 26.08.2016 passed by this Court as well as the order dated 17.04.2017 passed by the Apex Court, withholding of the amount by the respondents since 2016 is arbitrary and illegal. Therefore, direction may be issued to the respondents to refund the same forthwith alongwith interest.

On the other hand, learned counsel for the respondent/State has not denied the contentions of learned counsel for the petitioner. However, it is submitted that petitioner is not entitled for interest on the amount due as there is no specific provision under the VAT Act for payment of interest on refund.

Heard, learned counsel for the parties and perused the record.

Admittedly, the assessment order was quashed in W.P. No. 8560/2016 as also the SLP was dismissed upholding the order of this Court. In view of the aforesaid, the respondent was obliged to refund the amount so collected to the petitioner immediately after dismissal of SLP. Even though, there is no provisions of payment of interest on refund of amount so collected under the VAT Act, but, looking to the fact that the SLP was dismissed on 17.04.2017, the petitioner would be eligible for interest@6% per annum w.e.f. 17.04.2017 till the date of

refund.

In the circumstances, petition is allowed. Respondents are directed to refund the amount so collected and withheld since 2016 alongwith interest @6% per annum w.e.f. 17.04.2017 till the actual date of payment.

With the aforesaid directions, this writ petition stands disposed of.
No order as to cost.

(S. A. DHARMADHIKARI)

JUDGE

23.03.2023

(PRAKASH CHANDRA GUPTA)

JUDGE

23.03.2023



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