

in the light of the position of employees of the Union Territory of Chandigarh *vid-a-vis* employees of the Central Government. We make it clear that the parties would be entitled to urge all the pleas in support of their respective claims and the Tribunal shall not be influenced by any observation made in this judgment.

(9) In view of the above, the writ petition is allowed and the matter is remanded back to the Tribunal for decision afresh. The parties through their counsel are directed to appear before the Tribunal on 11th July, 2011.

V. Suri

Before M.M.Kumar & Ajay Kumar Mittal, JJ.

M/S INDUSTRIAL ORGANICS LIMITED,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 15464 of 2004

25th March, 2011

Constitution of India - Art. 47, 226/227, 245 277 & 304(b)- Companies Act, 1956 - Punjab Excise Act, 1914 - S.3, 31, 32 - Code of Civil Procedure, 1908 - O.XXIII Rl. 1 - Punjab Liquor Permit and Pass Rules, 1932 -Rl. 22 - Whether respondent State has competence to levy permit fees in respect of denatured spirit, especially when same is neither fit nor used for human consumption - Amendment in Rules - Enhancing permit fee for issuance of permit for denatured spirit from 30 paise per bulk litre to 60 paise per bulk litre - Constitutional validity - Held, not valid - Industrial alcohol or spirit having regard to Entry 52 of List I of Seventh Schedule of Constitution - Cannot be subject matter of any regulation or control by State, it being not alcoholic liquor for human consumption - (1990) 1 SCC 109 and (2009) 3 SCC 157 followed.

Held, that after reading Entries 42, 52, 84 and 97 of List I, Entries 8, 51 and 66 of List II of the Seventh Schedule of the Constitution and various provisions of the Excise Act and the rules known as "The Punjab

Liquor Permit and Pass Rules, 1932' (as applicable in the State of Himachal Pradesh), which were framed by the Financial Commissioner, it has been held by Hon'ble the Supreme Court that the State possesses the right to have complete control over all aspects of intoxicants viz. manufacture, collection, sale and consumption, etc. It also has the exclusive right to manufacture and sell liquor and to transfer the said right with a view to raise revenue. Right to fix the amount of consideration for grant of said privilege for manufacturing or vending liquor is also beyond any doubt or dispute. It has been further observed that the State has to make distinction between a Malt Spirit of over proof strength and potable liquor. Entries 8, 51 and 66 of List II of the Seventh Schedule of the Constitution confer jurisdiction upon the State only to exercise its legislative control in respect of matters which are covered thereby. Industrial alcohol or spirit having regard to Entry 52 of List I of the Seventh Schedule of the Constitution cannot be subject matter of any regulation or control by the State, it being not alcoholic liquor for human consumption. In that regard reliance has been placed on paras 53 and 54 of the 7-Judge Bench judgment of Hon'ble the Supreme Court rendered in the case of Synthetics and Chemicals Ltd. (1990) 1 SCC 109.

(Paras 22, 24 and 27)

Punjab Liquor Permit and Pass Rules, 1932 - Rl. 22 - Constitution of India, 1950 - Entry 52 of List I of Seventh Schedule and Entries 8, 51 and 66 of List II of Seventh Schedule - Industrial alcohol or spirit cannot be subject matter of any regulation or control by a State, it being not alcoholic liquor for human consumption - Impost imposed by State Government under amended Rule 22, whereby permit fee for issue of permit for denatured spirit has been enhanced from 30 paise per bulk litre to 60 paise per bulk litre is bad - Respondents directed to refund permit fees collected by them on denatured spirit purchased by petitioner under amended rules -Petition allowed in above terms.

Further held, that the inference which could have been easily drawn is that the industrial alcohol cannot be subject matter of any regulation or control by a State, it being not alcoholic liquor for human consumption. The impost imposed by the State Government under Rule 22 of the Rules whereby the permit fee for issue of permit for denatured spirit has been enhanced from 30 paise per bulk litre to 60 paise per bulk litre is bad. As

a corollary, the respondents are directed to refund the permit fees collected by them on denatured spirit purchased by the petitioner under the amended rules. The writ petition stands allowed in the above terms.

(Paras 27 and 28)

Vikram Jain, Advocate, and Dinesh K. Thakur, Advocate, *for the petitioner.*

Amol Rattan Singh, Additional Advocate General, Punjab, *for the respondents.*

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for construing Rule 22 of the Punjab Liquor Permit and Pass Rules, 1932 (for brevity, 'the Rules') as in-applicable to the industrial/denatured spirit. A further prayer has also been made for quashing notification No. G.S.R. 25/P.A. 1/14/Ss. 334 and 59/Amd.(22)/2004, dated 29.3.2004, enhancing the permit fee for issue of permit for denatured spirit from 30 paise per bulk litre to 60 paise per bulk litre by amending the Rules (P-1). Further directions have also been sought commanding the respondents not to charge any permit fees on denatured spirit under amended Rule 22 of the Rules. Still further it has been prayed that the respondents be directed to refund the permit fees with interest already collected on denatured spirit pursuant to the aforementioned impugned Rule 22 of the Rules and impugned notification dated 29.3.2004 (P-1).

FACTS:

(2) The petitioner is a public limited Company incorporated under the Companies Act, 1956. At the time of filing of writ petition, the name of the petitioner-company was 'M/s Industrial Organics Limited', however, during the pendency of the present proceedings it has been re-christened as 'IOL Chemicals and Pharmaceuticals Limited', with effect from 5.12.2006. The petitioner-company is engaged in manufacture of organic chemicals like acetic acid, ethyl acetate and acetic anhydride, which are used in pharmaceutical industry and also in manufacture of basic chemicals. In the manufacturing process of various chemicals including industrial alcohol 'denatured spirit' is used as raw material. As per its requirements, the petitioner-company procures denatured spirit from within the country and

also imports the same. For procuring, possession and storage of denatured spirit either from within the country or through imports, a permit in Form L-42A under Rule 22 of the Rules is required to be obtained from the respondent authorities.

(3) On 19.2.2004, the respondent State announced its Excise Policy for the year 2004-2005 under the provisions of the Punjab Excise Act, 1914 (for brevity, 'the Excise Act'), specifying the rates of permit fees for industrial alcohol and denatured spirit (P-2). As per Annexure-I appended to the Excise Policy 2004-2005, following rates of permit fees has been prescribed:-

"Sr. No.	Name of the Item	Rate of License Fee/ Other		Rate of Security	
		2003-04	2004-05	2003-04	2004-05
1	2	3	4	5	6
		(Rs.)	(Rs.)	(Rs.)	(Rs.)
1 to 44	xxx	xxx	xxx	xxx	xxx
PERMIT FEE					
45.	Denatured Spirit (per BL)	1.00	1.00		
46.	Industrial Alcohol for alcohol based industries (per BL)	0.30	0.60		
47.	Denatured Spirit/ Industrial Alcohol when imported from other States/ Union Territory (per BL)	0.30	0.60		
48.	Ethanol-Denatured with 0.2% crotonaldehyde and 4 gram Denatonium Bonzoate/ Denatonium Saccharide per 100 Ltrs. of Ethanol	0.60	1.00		
49 to 90.	xxx	xxx	xxx	xxx	xxx

4. On 26.2.2004, the petitioner-company made a representation to the Financial Commissioner (Taxation), Chandigarh-respondent No. 1 for reduction in the permit fees on the industrial alcohol to '0.05 per barrel (P-3).

(5) At this stage it would be pertinent to refer to various provisions of the Excise Act as well as the Rules. Various duties and fees are levied in accordance with the provisions contained in Chapter-V of the Excise Act. As per Section 31 of the Excise Act, 'excise duty' or a 'countervailing duty' may be imposed at such rate or rates as the State Government shall direct either generally or for any specified local area, on any 'excisable article'. The terms 'excisable article', 'excise duty' and 'countervailing duty' have been defined under sub-sections (6) & (6-b) of Section 3 of the Excise Act. The provisions of sub-sections (6) & (6-b) of Section 3 and Section 31 of the Excise Act read, thus:-

Sub-sections (6) & (6-b) of Section 3 of the Excise Act

"3. Definitions. In this Act and the rules made under it unless there is something repugnant in the subject or context:-

xxx xxx xxx xxx xxx

 xxx xxx xxx xxx

(6) Excisable article. – "Excisable article" means:-

- (a) any alcoholic liquor for human consumption; or
- (b) any intoxicating durg.

(6-a) xxx xxx xxx

(6-b) "excise duty" and "countervailing duty" means any such excise duty or countervailing duty as the case may be as mentioned in entry 51 of list II in the Seventh Schedule to the Constitution."

Section 31 of the Excise Act

“31. Duty on excisable articles.- An excise duty or a countervailing duty as the case may be at such rate or rates as the State Government shall direct, may be imposed either generally or for any specified local area, on any excisable article.

- (a) imported, exported or transported in accordance with the provisions of Section 16; or
- (b) manufactured or cultivated under any licence granted under Section 20; or
- (c) manufactured in any distillery established or any distillery or brewery licensed under Section 21;

Provided as follows:-

- (i) duty shall not to be so imposed on any article which has been imported into India and was liable on importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878;
- (ii) Explanation.- Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strength and quality of such article.”

(6) A bare perusal of Sub-section (6-b) of Section 3 of the Excise Act reveals that excise duty and countervailing duty means any such duty as mentioned in Entry 51 of List-II in the Seventh Schedule to the Constitution, which reads as under:-

Entry 51 of List-II in the Seventh Schedule of the Constitution

“51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India: -

- (a) Alcoholic liquors for human consumption;
- (b) Opium, Indian hemp and other narcotic drugs and narcotics, But not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.”

(7) Section 32 of the Excise Act prescribes the manner in which the duty may be levied. As per the stipulation contained in Section 32 of the Excise Act, the duty is levied on the quantity of excisable articles which are imported, exported, transported, collected or manufactured in or issued from a distillery, brewery or warehouse, in accordance with the rules regulating the time, place and manner as the Financial Commissioner may prescribe. Section 32 of the Excise Act is reproduced as under:-

Section 32 of the Excise Act

“32. Manner in which duty may be levied.- Subject to such rules regulating the time, place and manner as the Financial Commissioner may prescribe, such duty shall be levied rateably, on the quantity of excisable article imported, exported, transported, collected or manufactured in or issued from a distillery, brewery or warehouse:

Provided that duty may be levied:-

- (a) on intoxicating drugs by an acreage rate levied on the cultivation of the hemp plant or by a rate charged on the quantity collected.
- (b) on spirit or beer manufactured in any distillery established or any distillery or brewery licensed, under this Act in accordance with such scale or equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe;
- (c) on tari, by a tax on each tree from which the tari is drawn:

Provided further that where payment is made upon issue of an excisable article for sale from a warehouse established or licensed under Section 22(a) it shall be made-

- (a) if the State government by notification so directs, at the rate of duty which was in force at the date of import of that article, or

- (b) in the absence of such direction by the State Government, at the rate of duty which is in force on that article on the date when it is issued from the warehouse.”

(8) Under the Excise Act, the Rules were notified vide Notification No. 6000-E&S, dated 12.11.1932. The State of Punjab levied permit fees on denatured spirit under Rule 22 of the Rules, which reads as under:-

“22. The Excise Commissioner is pleased to prescribe the following forms and conditions for the exemption permits referred to in order 18 of the Punjab Liquor Import, Export, Transport and Possession Orders:-

(a) and (b) Deleted.

(c) A permit for the possession of ordinary country spirit for private use granted to any person for use on any special occasion shall be granted by the Collector in Form L. 43 and shall cover the transport of such spirit.

(d) A permit for the possession of denatured spirit granted to educational institutions, hospitals, dispensaries, research institutions or to any chemist, varnish maker or other person engaged in any business who requires large quantities of denatured spirit for the purpose of his business shall be granted by the Collector in Form L. 42-A.

A fee at the rate of two rupees per bulk litre on the quantity of denatured spirit which the permit holder has been permitted to possess shall be recovered at the time of issue of the permit:

Provided that in respect of denatured spirit consumed by the industries which are declared by the Excise Commissioner to be alcohol based industries the fee would be assessed at the rate of thirty paise per bulk litre:

Provided further that in case a permit holder is allowed to import denatured spirit from outside the State of Punjab, he shall pay reduced fee at the rate of thirty paise per bulk litre.

Provided further that no fee shall be charged on the quantity of denatured spirit on which fee has already been recovered previously in the Punjab.

Provided further that in any case of a special nature falling under this sub-rule the Excise Commissioner may vary the condition of the permit granted for possession of denatured spirit in such manner, as he may think fit may remit the fee prescribed thereof.

Note- Rectified spirit of 66 degree to 69 degree over proof strength specially denatured with two per cent kerosene in the manner prescribed by the Excise Commissioner to be used as fuel for motor vehicles shall be exempted from the payment of permit fee provided that the issues are made in accordance with such conditions as may be prescribed in this behalf by State Government.

- (e) A permit for the possession of rectified spirit granted to any Chemist Medical Practitioner Superintendent of a Hospital, approved homoeopathic chemist or practitioner, arsenals of the Ordinance Department, or to any hospital, dispensary, scientific body or educational institution, or to any other who requires large quantities of rectified spirit, shall be granted by the Collector in Form L. 42-B.
- (f) The Collector is authorised to grant a permit for the possession of specially denatured spirit in excess of the limit specified for retail sale, to soap manufacturers for the purpose of their business. Such permits shall be in Form L. 42-C and will be issued only on execution of a bond to secure the proper storage and use of such spirit. Such bond shall be in Form L. 48.
- (g) A fee at the rate of sixty paise per proof litre on Ethanol-Denature with 0.2% Crotonaldehyde and 4 gram Denatonium Benzoate/Denatonium Scharide per 100 litres of Ethanol shall be recovered at the time of issue of permit.
- (h) Deleted.”

(9) A bare perusal of Rule 22 of the Rules shows that different forms have been prescribed for issuance of permits and possession of ordinary country spirit, denatured spirit, rectified spirit, specially denatured spirit and Ethanol etc. to be used for different purposes. A permit for possession of denatured spirit required by a person engaged in any business requiring large

quantities of denatured spirit for his business is to be granted by the Collector in Form L.42-A. As per first proviso of sub-clause (d) of Rule 22 of the Rules, in respect of denatured spirit consumed by the industries which are declared by the Excise Commissioner to be alcohol based industries, a fee at the rate of thirty paise per bulk litre is to be assessed. Similarly, second proviso of sub-clause (d) further prescribes that in case a permit holder is allowed to import denatured spirit from outside the State of Punjab, he would be required to pay reduced fee at the rate of thirty paise per bulk litre. Third proviso of sub-clause (d), however, stipulates that no fee shall be charged on the quantity of denatured spirit on which fee has already been recovered previously in the State of Punjab. Subclause (g) of Rule 22 of the Rules prescribes that a fee at the rate of sixty paise per proof litre on Ethanol-Denature with 0.2% Crotonaldehyde and 4 gram Denatonium Benzoate/Denatonium Scharide per 100 litres of Ethanol shall be recovered at the time of issue of permit.

(10) On 29.3.2004, in exercise of the powers conferred by Sections 34 and 59 of the Act read with Notification No. S.O. 19/P.A. 1/14/S.9/2003, dated 10.6.2003, issued by the Government of Punjab, Department of Excise and Taxation, the Excise Commissioner, exercising the powers of Financial Commissioner, issued a notification further amending the Rules, known as 'the Punjab Liquor Permit and Pass (Second Amendment) Rules, 2004, which came into force w.e.f. 1.4.2004. Following amendment has been made in Rule 22 of the Rules, vide the above mentioned notification dated 29.3.2004:-

“3. In the said rules, in rule 22, —

- (i) in clause (d), in the first and second proviso, for the words ‘thirty paise’, the words ‘sixty paise’ shall be substituted;
- (ii) in clause (g), for the words ‘sixty paise’, the words ‘one rupee’ shall be substituted.”

(11) A bare perusal of above amendment shows that levy of permit fee on denatured spirit has been increased from thirty paise to sixty paise and on Ethanol-Denature with 0.2% Crotonaldehyde and 4 gram Denatonium Benzoate/Denatonium Scharide per 100 litres of Ethanol from sixty paise

to one rupee. Feeling aggrieved, the petitioner-company challenged the vires of the provisions of Rule 22 of the Rules in the instant petition. It is apposite to notice here that the petitioner-company had earlier approached this Court by filing C.W.P. No. 9184 of 1991 for quashing Rule 22 of the Rules. However, the aforementioned writ petition was dismissed as withdrawn vide order dated 21.4.1995 passed in C.M. No. 3581 of 1995 in CWP No. 9184 of 1991.

(12) In the written statement filed by the respondents a preliminary objection has been taken that the writ petition is not maintainable since the petitioner-company itself was paying permit fee for more than 10 years and, thus, could not challenge the vires of Rule 22 of the Rules merely because some increase has been made in the rates of permit fee for the financial year 2004-2005. It has further been asserted that the petitioner-company is also estopped from filing the writ petition in view of the fact that on the same cause of action earlier also a writ petition was filed by the petitioner-company which was subsequently withdrawn on 21.4.1995. It has further been claimed that the petitioner-company is confusing the terms 'Industrial Alcohol' and 'denatured spirit'. It has, thus, been explained that Industrial Alcohol is 'Ethyl Alcohol' or could be termed as 'rectified spirit', which could even be utilized for potable purposes also, with small processing, whereas 'Denatured Spirit' comes into existence after addition of various denaturants to 'Industrial Alcohol'. After referring Rule 22 of the Rules it has been submitted that permit in Form L-42A is meant for the purchase, possession and storage of denatured spirit and it is issued for a year or a part of it. Thus, the contention of the petitioner has been denied that it is to be obtained each and every time the consignment is to be obtained.

(13) In para 5 of the said reply on merit, it has been stated that various services are rendered by the State in the production, storage and regulation of the supply of spirit, which is denatured with the addition of various denaturants. For example, State's control and supervision is exercised in the distilleries from the stage of the supply and supervision of molasses, which is the basic raw material for the manufacture of the spirit. Care is also taken that commodity becomes available in sufficient quantities to the distilleries for the manufacture of spirit. In paras 7 and 8 it has been

highlighted that the petitioner is mixing the terms 'Excise Duty', 'Permit Fee' and Custom Duty'. 'Excise Duty' is leviable under Section 31 of the Excise Act whereas 'Permit Fee' is levied under Rule 22 of the Rules. In fact, on the import of denatured spirit no 'Excise Duty' is levied or charged but only 'Permit Fee' is being charged on account of various services rendered by the State of Punjab, which is based on the principle of quid pro quo. Similarly, 'Custom Duty' is levied by the Central government. It has been then submitted that supervision over the sale, supply and possession of imported spirit is must because it can be used for potable purposes at any time by unscrupulous elements by converting the same into alcoholic liquor. As a matter of fact, the petitioner company has been paying permit fee at the prescribed rates on the denatured spirit for more than a decade but never questioned against levy of permit fee before any competent authority of the State of Punjab. Justifying the increase in the rates it has been asserted that the same has been done after taking a conscious decision considering all aspects of the matter, which is just and legal.

(14) It would be pertinent to mention here that when the case came up for hearing on 6.11.2009, Mr. Amol Rattan Singh, Additional Advocate General Punjab, raised two preliminary objections. Firstly, he has submitted that the petitioner had earlier filed CWP No. 9184 of 1991, which was dismissed as withdrawn on 21.4.1995. In that regard, he has drawn our attention to the order dated 21.4.1995, which reads thus:

"C.M. No. 3581 of 1995 in
CWP No. 9184 of 1991
Mr. Mansur Ali, Advocate.

C.M. is allowed as prayed. CWP No. 9184 of 1991 is dismissed as withdrawn.

21.4.1995

Sd/-

(H.S. BEDI)
JUDGE"

(15) Banking upon the provisions of Order XXIII Rule 1 of the Code of Civil Procedure, 1908, and various judgments of Hon'ble the Supreme Court rendered in the cases of **Surguja Transport Service versus STAT (1)**; **Upadhyay & Co. versus State of U.P. (2)**; **Avinash Nagra versus Navodaya Vidyalaya Samiti (3)**; **State of Haryana versus State of Punjab (4)**; and **H.P.S.E.B. versus K.R. Gulati (5)**, learned State counsel has sought to raise a question that if a writ petition filed under Article 226 of the Constitution has been withdrawn without permission to institute a fresh petition, can the writ petitioner file such a petition on the same cause of action or there is a bar on the ground of public policy to do so. The answer to the question has been given in the negative. Learned State counsel banking upon the observations made in the judgments has argued that the public policy requires that once the petitioner had earlier filed CWP No. 9184 of 1991 and had got the same dismissed as withdrawn without permission then the instant petition filed in 2004 would not be maintainable, inasmuch as, the Constitutional validity of Rule 22 of the Rules has been challenged once again.

(16) Mr. Amol Rattan Singh raised another preliminary objection that the levy under Rule 22 of the Rules is a preconstitutional levy because the Rules were enacted in the year 1932. According to the learned counsel as per the provisions of Article 277 of the Constitution there is no pre-constitutional levy till the time Parliament frames a new law under the Constitution. He has further submitted that merely because the earlier levy which used to be collected by the States has been put in the competence of the Parliament by bringing that subject under List I of Schedule VII would not be illegal.

(17) We have thoughtfully considered the aforesaid submissions made by the learned State counsel and are of the view that the preliminary objections raised are not sustainable because the prayer made by the petitioner shows that it has sought quashing of order dated 29.3.2004

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- (1) (1987) 1 SCC 5
 - (2) (1999) 1 SCC 81
 - (3) (1997) 2 SCC 534
 - (4) (2004) 12 SCC 673
 - (5) (1998) 2 SCC 624

(P-1) which is a notification enhancing the permit fee for issuance of permit in denatured spirit from 0.30 paisa per bulk litre to 0.60 paisa per bulk litre under the Rules. It has been claimed that the levy is illegal and contrary to the provisions of the Excise Act as it is only the Parliament which has competence to frame law for levy on denatured spirit as per Entry 51 of List II of Schedule VII of the Constitution. In the course of aforesaid challenge, the petitioner has also challenged the constitutional validity of Rule 22 of the Rules on the ground that imposition of such a levy is within the domain of the Parliament and the State cannot frame any law except the law in respect of liquor which is fit for human consumption. The second preliminary objection sought to be raised by the learned State counsel can also not be accepted in view of the authoritative judgment of 7-Judge Bench of Hon'ble the Supreme Court rendered in the case of **Synthetics and Chemicals Ltd. versus State of U.P. (6)**. In para 48 of the judgment, their Lordships has rejected a similar argument by observing as under:-

“ At the outset, it may be noted that in view of the subsequent amendment and the additions to the levies it cannot, in our opinion, with legitimate force be contended that the levies which are sought to be impugned in the present litigation are pre-Constitutional levies. So, these submissions on behalf of the State do not require any serious consideration.”

(18) It is further pertinent to notice that in para 54, it has been concluded that the vend fee in Uttar Pradesh is a preconstitution imposition could not be accepted and it would not be subject to Article 245 of the Constitution. The present extent of imposition of vend fee is not a pre-constitution imposition, as had been noticed from the change of rate from time to time. In the present case also, the admitted position is that the rates of levy have been changed from 0.30 paisa per bulk litre to 0.60 paisa per bulk litre and now to 0.45 paisa per bulk litre. Therefore, this preliminary objection is not sustainable as the matter falls within the purview laid by the judgment of 7-Judge Bench of Hon'ble the Supreme Court in the case of Synthetics and Chemicals Ltd. (supra). Mr. Anmol Rattan Singh has also drawn our attention to para 7 of the judgment rendered by a 5-Judge Bench of Hon'ble the Supreme Court in the case of **State of Kerala versus M/s South India Corporation (P) Ltd. (7)**. However, it is not possible

(6) (1990) 1 SCC 109

(7) (1972) 4 SCC 106

to accept the arguments of the learned State counsel because Rule 22 of the Rules was under consideration of their Lordships in the case of Synthetics and Chemicals Ltd. (supra) whereas in the case of M/s South India Corporation (P) Ltd. (supra) entirely different subject matter was dealt with. Therefore, we reject the aforesaid two preliminary objections.

(19) Mr. Vikram Jain, learned counsel for the petitioner has argued that the respondent State has no power to levy tax on industrial alcohol whether or not it has a potential to be used as alcoholic liquor. In that regard, learned counsel has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **State of U.P. versus Vam Organic Chemicals Ltd. (8)**, (paras 29, 36, 43 to 45). Referring to the provisions of Article 246 of the Constitution read with Entry 83 of List I of the Seventh Schedule, learned counsel has submitted that the power to levy import duty on import of any goods from outside the country vests exclusively with the Union Government and the State Government has no power, authority or legislative competence to levy import permit fee on import of denatured spirit. Further substantiating his argument, learned counsel has stated that the industrial alcohol in any eventuality cannot be termed as an intoxicating drink. Imposition of any charge of duty or permit fee on the denatured alcohol, which is an industrial alcohol being used as a raw material, violates the provisions of Article 47 of the Constitution. In that regard, learned counsel has placed reliance on para 77 of judgment of Hon'ble the Supreme Court rendered in the case of Synthetics and Chemicals Ltd. (supra). In para 110 of the judgment it has been clearly laid down that there is a clear demarcation of authority under various items in three lists of the Seventh Schedule of the Constitution and Entry 8 of List II could not be invoked to justify the levies which have been imposed by the State in respect of alcoholic liquor which is not meant for human consumption.

(20) Mr. Jain has also submitted that for the purpose of levy of any fees, the element of quid pro quo is a pre-requisite. However, the respondent State of Punjab has failed to place on record any material to justify its demand, therefore, the impugned levy is unsustainable and liable to be set aside. According to him, if any tax or fee is levied by the State without jurisdiction and in contravention of the Constitution, such a collection would

amount to 'unjust enrichment' on the part of the State and the same is liable to refund. In that regard reliance has been placed on a Full Bench judgment of Bombay High Court rendered in the case of **New India Industries Ltd. versus Union of India (9)**. While summing up his arguments, Mr. Jain has finally placed reliance on the latest judgment of Hon'ble the Supreme Court rendered in the case of **Mohan Meakin Limited versus State of Himachal Pradesh (10)**, wherein entire case law has been discussed and the instant petition is fully covered by that judgment.

(21) Mr. Amol Rattan Singh, learned Additional Advocate General, Punjab, has vehemently argued that the State could lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol. In that regard he has placed reliance on the observations made in para 86 of the Constitution Bench judgment of Hon'ble the Supreme Court rendered in the case of Synthetics and Chemicals Ltd. (supra). According to the learned State counsel the view expressed in para 43 of the judgment in the case of Vam Organic Chemicals Ltd. (supra) is contrary to the law laid down by the Constitution Bench in Synthetics and Chemicals Ltd. (supra). He has submitted that the State may charge a fee on the basis of quid pro quo. However, as the concept of regulatory fee has undergone a complete change, therefore, the State is empowered to regulate industrial alcohol and no quid pro quo is essential for the same. In that regard reliance has been placed on the judgments of Hon'ble the Supreme Court rendered in the cases of **A.P. Papers Mills versus Government of Andhra Pradesh (11)**, (paras 24, 29 to 31) and **State of Bihar versus Shree Baidyanath Ayurved Bhawan (P) Ltd. (12)**, (paras 19 to 28 & 30 to 32).

(22) We have heard learned counsel for the parties and bestowed our thoughtful consideration. The only issue raised in the instant petition is whether the respondent State of Punjab has competence to levy permit fees in respect of denatured spirit, especially when the same is neither fit nor used for human consumption. We are of the considered view that the said question needs no detailed discussion because the same has been elaborately

(9) AIR 1990 Bom. 239

(10) (2009) 3 SCC 157

(11) (2000) 8 SCC 167

(12) (2005) 2 SCC 762

dealt with and answered by Hon'ble the Supreme Court in the case of Mohan Meakin Limited (supra). In that case their Lordships of Hon'ble the Supreme Court have considered the constitutional validity of increase in levy made by the State of Himachal Pradesh on import/transport of rectified spirit and/or potable alcohol. It would be apposite to borrow some of the facts of the said case. The appellant-Mohan Meakin Limited was carrying on its business of manufacture and sale of India Made Foreign Liquor (IMFL) and beer etc. Its distillery was situated at Kasauli in the District of Solan. It held a licence in Form D-2 granted by the State of Himachal Pradesh in terms of the provisions of the Excise Act and the Rules framed thereunder. For the purpose of running the said distillery, it imported "malt spirit of over proof strength" from its distillery situated at Mohan Nagar in the State of Uttar Pradesh for which it was required to obtain an import permit. It also transported some quantities of malt spirit of over proof strength from certain breweries also located in the State of Uttar Pradesh during the relevant years viz. 1997-98 and 1998-99.

(23) A permit/transport fee was directed to be levied for the first time in terms of the excise policy for the year 1996-97, dated 12.3.1996. A permit fee on denatured spirit, foreign spirit and country liquor respectively became leviable. Such permit fee was payable at the time of grant of permission for transportation of liquor. It was payable by a person who made an application for grant of permission for import and/or transport of foreign liquor or country liquor or both. A demand was made by the Excise and Taxation Officer towards permit fee on the spirit imported by the appellant during the year 1996-97. Another demand was made up to 6.2.1999 for making similar import. A representation was made by the appellant in respect of the said demands contending that the State of Himachal Pradesh had no jurisdiction to levy such fee and that no services having been rendered to the appellant, a quantum jump of the licence fee in the name of such permit fee was not justified. The said representation of the appellant was rejected. A writ petition filed by the appellant in the High Court was rejected. The appellant, thus, approached Hon'ble the Supreme Court.

(24) After reading Entries 42, 52, 84 and 97 of List I, Entries 8, 51 and 66 of List II of the Seventh Schedule of the Constitution and various provisions of the Excise Act and the rules known as 'the Punjab Liquor

Permit and Pass Rules, 1932' (as applicable in the State of Himachal Pradesh), which were framed by the Financial Commissioner, it has been held by Hon'ble the Supreme Court that the State possesses the right to have complete control over all aspects of intoxicants viz. manufacture, collection, sale and consumption, etc. It also has the exclusive right to manufacture and sell liquor and to transfer the said right with a view to raise revenue. Right to fix the amount of consideration for grant of said privilege for manufacturing or vending liquor is also beyond any doubt or dispute. It has been further observed that the State has to make distinction between a Malt Spirit of over proof strength and potable liquor. Entries 8, 51 and 66 of List II of the Seventh Schedule of the Constitution confer jurisdiction upon the State only to exercise its legislative control in respect of matters which are covered thereby. Industrial alcohol or spirit having regard to Entry 52 of List I of the Seventh Schedule of the Constitution cannot be subject matter of any regulation or control by the State, it being not alcoholic liquor for human consumption. In that regard reliance has been placed on paras 53 and 54 of the 7-Judge Bench judgment of Hon'ble the Supreme Court rendered in the case of Synthetics and Chemicals Ltd. (supra), which reads thus:

“53. It was further submitted by the State that the State has exclusive right to deal in liquor. This power according to the counsel for the State, is reserved by and/or derived under Articles 19(6) and 19(6)(ii) of the Constitution. For parting with that right a charge is levied. It was emphasised that in a series of decisions some of which have been referred to hereinbefore, it has been ruled that the charge is neither a fee nor a tax and termed it as privilege. The levy is on the manufacture, possession of alcohol. The rate of levy differs on its use, according to the State of U.P. The impost is also stipulated under the trading powers of the State under Article 298 and it was contended that the petitioners and/or appellants were bound by the terms of their licence. It was submitted that the Parliament has no power to legislate on industrial alcohol, since industrial alcohol was also alcoholic liquor for human consumption. Entry 84 in List I expressly excludes alcoholic liquor for human consumption; and due to express exclusion of alcoholic liquor for human consumption

from List I, the residuary Entry 97 in List I will not operate as against its own legislative interest. These submissions have been made on the assumption that industrial liquor or ethyl alcohol is for human consumption. It is important to emphasise that the expression of a constitution must be understood in its common and normal sense. Industrial alcohol as it is, is incapable of being consumed by a normal human being. The expression 'consumption' must also be understood in the sense of direct physical intake by human beings in this context. It is true that utilisation in some form or the other is consumption for the benefit of human beings if industrial alcohol is utilised for production of rubber, tyres used. The utilisation of those tyres in the vehicle of man cannot in the context in which the expression has been used in the Constitution, be understood to mean that the alcohol has been for human consumption.

54. We have no doubt that the framers of the Constitution when they used the expression 'alcoholic liquor for human consumption' they meant at that time and still the expression means that liquor which as it is is consumable in the sense capable of being taken by human beings as such as beverage of drinks. Hence, the expression under Entry 84, List I must be understood in that light. We were taken through various dictionary and other meanings and also invited to the process of manufacture of alcohol in order to induce us to accept the position that denatured spirit can also be by appropriate cultivation or application or admixture with water or with others, be transformed into 'alcoholic liquor for human consumption' and as such transformation would not entail any process of manufacture as such. There will not be any organic or fundamental change in this transformation, we were told. We are, however, unable to enter into this examination. Constitutional provisions specially dealing with the delimitation of powers in a federal polity must be understood in a broad commonsense point of view as understood by common people for whom the Constitution is made. In terminology, as understood by the framers of the Constitution, and also as viewed at the relevant

time of its interpretation, it is not possible to proceed otherwise; alcoholic or intoxicating liquors must be understood as these are, not what these are capable of or able to become. It is also not possible to accept the submission that vend fee in U.P. is a pre-Constitution imposition and would not be subject to Article 245 of the Constitution. The present extent of imposition of vend fee is not a pre-Constitution imposition, as we noticed from the change of rate from time to time.” (emphasis in original)

(25) With regard to the State’s power to exercise control of inter-State transport, in para 26 of the judgment in Mohan Meakin Ltd. (supra) it has been held that it is within the exclusive legislative competence of the Parliament having regard to Entry 42, List I of the Seventh Schedule of the Constitution and would, thus, be limited. Thus, its power to impose compensatory tax and/or fee would also be limited as envisaged by Article 304(b) of the Constitution. On the question that jurisdiction of the State to impose levy on denatured spirit is limited the following observations made in para 43 of the judgment rendered in the case of Vam Organic (supra) have also been considered:

“43. Considering the various authorities cited, we are of the view that the State Government is competent to levy fee for the purpose of ensuring that industrial alcohol is not surreptitiously converted into potable alcohol so that the State is deprived of revenue on the sale of such potable alcohol and the public is protected from consuming such illicit liquor. But this power stops with the denaturation of the industrial alcohol. Denatured spirit has been held in Vam Organics-I [Vam Organic Chemicals Ltd. v. State of U.P., (1997) 2 SCC 715] to be outside the seisin of the State Legislature. Assuming that denatured spirit may by whatever process be renatured (a proposition which is seriously disputed by the respondents) and then converted into potable liquor, this would not give the State the power to regulate it. Even according to the demarcation of the fields of legislative competence as envisaged in Bihar Distillery [Bihar Distillery v. Union of India, (1997) 2 SCC 727] industrial alcohol for industrial purposes falls within the exclusive control of the Union and according to Bihar Distillery ‘denatured rectified spirit, of course, is wholly and exclusively industrial alcohol’ (SCC p. 742, para 23).”

(26) Eventually Hon'ble the Supreme Court found that the opinion as expressed by the High Court cannot be sustained and while setting aside the same, the matter was remitted to the High Court for consideration afresh.

(27) From the above, the inference which could have been easily drawn is that the industrial alcohol cannot be subject matter of any regulation or control by a State, it being not alcoholic liquor for human consumption.

(28) Accordingly, it is held that the impost imposed by the State Government under Rule 22 of the Rules whereby the permit fee for issue of permit for denatured spirit has been enhanced from 30 paise per bulk litre to 60 paise per bulk litre is bad. As a corollary, the respondents are directed to refund the permit fees collected by them on denatured spirit purchased by the petitioner under the amended rules. The writ petition stands allowed in the above terms.

V. Suri

Before K. Kannan, J.

SARUP SINGH SON OF ROLLA SINGH & OTHERS,—
Petitioners

versus

ADDL. DIRECTOR, CONSOLIDATION OF HOLDINGS,
PUNJAB AND OTHERS,—Respondents

C.W.P. No.11442 of 1991

2nd September, 2011

Constitution of India - Art. 226 - East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act of 1948 - Ss. 21(1) & 42 - Punjab Village Common Lands (Regulation) Act of 1961 - S. 2(g) - Petitioner claiming to be lessees on property from Gram Panchayat - Plea before Consolidation Authority that property entered as Shamlat Deh Hasab Rasad Zar Khewat and has vested with right holders and thus mutation ordered by Gram Panchayat was wrong and required to be set aside and property should be allowed to be partitioned amongst right holders - Plea accepted by Addl. Director - Order challenged before Director who rejected