

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL No. 6798 OF 2014

**IN THE MATTER OF:-**

State of Kerala .....Appellant  
Versus  
United Spirits Ltd. ....Respondent

**WRITTEN SUBMISSIONS BY Mr. V. GIRI, SENIOR ADVOCATE,  
ON BEHALF OF APPELLANT STATE OF KERALA**

**Impugned Judgment:-**

The High Court followed the Judgment passed by this Hon'ble Court in ***Synthetic and Chemicals Ltd. v. State of UP (1990) 1 SC 109***, holding that levy of import fee by the State on the special spirits imported to the State from outside for manufacturing liquor meant for human consumption is beyond the legislative power of the State and the demand for import fee is unconstitutional.

***Synthetic and Chemicals Ltd. v. State of UP (1990) 1 SC 109***

In ***Synthetic and Chemicals Ltd.*** (supra) a seven Judge Bench of this Hon'ble Court, while examining the power of the State

Governments to levy excise duty and vend fee on industrial alcohol, held that the power to levy excise duty in case of industrial alcohol was with the Central legislature. It was further held that after the 1956 amendment to the Industries (Development and Regulation) Act, 1951 ( hereinafter referred to the IDR Act) bringing alcohol under *industries* as Item 26 of the First Schedule to IDR Act, the license to manufacture alcohol is vested in the Central Government and the State cannot claim exclusive right to produce and manufacture industrial alcohol and the State cannot claim that under Entry 33 of List III, it can regulate industrial alcohol as a product of the scheduled industry because the Union, under Section 18G of the IDR Act has evinced the clear intention to occupy the whole field.

### **Reference Order**

This Hon'ble Court in ***State of UP v. Lalta Prasad Vaish (2007) 13 SCC 463*** referred the Judgment in ***Synthetic and Chemicals Ltd.*** (supra) to a larger Bench on the ground that if the decision in ***Synthetic and Chemicals*** case (supra) with regard to the interpretation of Section 18-G of the Industries (Development and Regulation) Act, 1951 is allowed to stand, it would render the

provisions of Entry 33(a) of List III of the Seventh Schedule of the Constitution of India nugatory or otiose.

## **Propositions on behalf of the appellant**

- (i) After the 2016 amendment to the Industries (Development and Regulation) Act, 1951 substituting Item 26 of the First Schedule of the said Act as “26. Fermentation Industries (other than Potable Alcohol)”, the ratio in ***Synthetic and Chemicals Ltd. v. State of UP (1990) 1 SC 109*** is not applicable to the cases where the State imposes levy on the removal or clearance of rectified spirit/special spirit for obtaining or manufacturing potable alcohol.
- (ii) The principle laid down in ***Synthetic and Chemicals Ltd. v. State of UP (1990) 1 SC 109*** that States have been denuded of any power to deal with rectified spirit meant for human consumption including power to levy vend fees, is not good law, after the 2016 amendment to the Industries (Development and Regulation) Act, 1951 which gives the total and exclusive control to the States to legislate on the industries engaged in the manufacture of alcohol meant for potable purposes.

- (iii) Even without reference to the amendment effected to the IDR Act, 1951, in the year 2016, the principle laid down in *Synthetic and Chemicals* to the effect that the states are completely denuded of the power to effect a levy on all spirits which are imported into the state even if they are to be processed to make it potable alcohol fit for human consumption, it is submitted, requires reconsideration. This interpretation is inconsistent with the scope and amplitude of Entry 51 of List II of the Seventh Schedule which provides legislative competence to a State to levy Excise Duty on potable alcohol. Unless the spirits which are imported into the state are completely incapable of being processed into potable alcohol for human consumption, it would still be within the competence of the State legislature to levy a duty of Excise on such spirits which are being imported into the State for processing into potable alcohol fit for human consumption.
- (iv) A legislation traceable to Entry 51 of List II of the Seventh Schedule not only defines a duty of Excise, but also provides for the stages at which it can be levied. Import for the purpose of the Abkari Act is not merely import from outside

the country, but a movement of the goods into the state from another state. One of the stages for levy of duty of Excise under the Abkari Act is transportation of goods. The competence of such levy has been upheld by this Hon'ble Court , inter alia, in ***State of Kerala v. Maharashtra Distilleries (2005) 11 SCC 1.***

- (v) There is only one category of spirit which completely stands outside the purview of a state legislature under Entry 51 of List II-that would be denatured spirit which is completely unfit for human consumption and incapable of being processed into potable alcohol. The principle in *Synthetics and Chemicals* will have to be confined to such denatured spirits which is incapable of being processed into potable alcohol fit for human consumption coming within the purview of Entry 51 of List II in the Seventh Schedule and the state legislation dealing with all aspects of potable alcohol including levy of duty of excise or any other levy on potable alcohol authorized by the state legislation.

- (vi) The principle laid down by this Hon'ble Court in ***Bihar Distillery v. Union of India***( 1997) 2 SCC 727 that the levy of duties of excise on the removal/clearance of rectified spirit for obtaining or manufacturing potable liquors, is applicable to the case of special spirits imported to the State for manufacture of potable alcohol, especially in view of the 2016 amendment to Item 26 of the First Schedule of the Industries (Development and Regulation) Act, 1951.

### **SUBMISSIONS**

- I. The respondent herein had imported "Special Spirits" having strength of 69% to slightly above 70% v/v (volume by volume) of ethyl alcohol to the State of Kerala for the purpose of manufacturing Indian Made Foreign Liquor (IMFL). Section 18 of the Kerala Abkari Act provides for a duty of excise or countervailing duty in the case of import of spirits or beer or intoxicating drugs. The Foreign Liquor Rules defines liquor as means and includes all wines, spirits, beer cidar, fenny and other fermented liquors and plain rectified spirit including absolute alcohol intended to be used for the manufacture of liquors for human consumption. The respondent herein

challenged the demand for import fee on special spirits brought into the State from outside for the purpose of manufacturing IMFL, before the High Court of Kerala on the ground that the “special spirit” cannot be treated as “potable liquor” and thus the State has no power to levy duty on the same. This is clearly wrong.

- II. It is submitted that after the 2016 amendment to the industries (Development and Regulation) Act, 1951 substituting Item 26 of the First Schedule of the Act as “26. Fermentation Industries (other than Potable Alcohol)”, the ratio in ***Synthetic and Chemicals Ltd.*** is not at all applicable to the cases where the State imposes levy on the removal or clearance of rectified spirit or special spirit for obtaining or manufacturing potable alcohol meant for human consumption. In ***Synthetic and Chemicals Ltd*** it was held that by virtue of 1956 amendment inserting alcohol in Item 26 of the First Schedule of the IDR Act, the Union only has the control of the industries manufacturing industrial alcohol and the State Government have no power to levy vend fees on industrial alcohol. It was held that this embargo on the State is extended to manufacture of alcohol meant for human

consumption. It is submitted that when the amendment in IDR Act, excluded potable alcohol from the purview of the said Act, there is no embargo exists now on the State to extent to power to levy vend fees on rectified spirit or special spirit for obtaining or manufacturing potable alcohol meant for human consumption.

- III. It is submitted that the purposive and updating interpretation given by this Hon'ble Court in ***Bihar Distillery v. Union of India***(1997) 2 SCC 727 to Entry 51 of List II and Entry 84 in List I of the Seventh Schedule of the Constitution of India in holding that where the entire rectified spirit produced is supplied for potable purposes or to the extent it so supplied, the levy of excise duties an all other control shall be that of States, is still holds the field. It is submitted that this view in ***Bihar Distillery***(supra) is fortified by the 2016 amendment to the IDR Act.
- IV. It is submitted that the Judgment in ***Bihar Distillery v. Union of India*** ( 1997) 2 SCC 727 was not expressly overruled by the larger Bench in ***Deccan Sugar &Abkari Ltd. v. Commissioner***



**of Excise (2004) 1 SCC 243**. Therefore the conclusion in **Bihar Distillery** “ So far rectified spirit meant for being supplied to or utilized for potable purposes is concerned, it shall be under the exclusive control of the States from the moment it is cleared/removed for that purpose from the distillery” , is squarely applicable in the instant case.

- V. It is submitted that this Hon’ble Court in in **Bihar Distillery v. Union of India(1997) 2 SCC 727** specifically held that the issue relating to rectified spirit meant for manufacturing potable liquor was not considered in **Synthetic and Chemicals Ltd.,** proceeded to hold that the line of demarcation can and should be drawn at the stage of clearance/removal of the rectified spirit. It was held that where the removal/clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be of the Union but where the removal/clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be that of the States. It is submitted that this principle, on all fours, is applicable to the case of special spirits imported to the State of Kerala for manufacture of IMFL also, especially in view of the 2016 amendment to Item 26 of

the First Schedule of the IDR Act, 1951. It is submitted that after the 2016 amendment to IDR Act, industries engaged in the manufacture of alcohol meant for potable purposes shall be under the total and exclusive control of States in all respects.

FILED BY



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