IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.251 of 1999 along with CWP No.590 of 1999.

Judgment reserved on: 14.07.2017.

Date of decision : 31st August, 2017.

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1. CWP No.251 of 1999.

Mohan Meakin Ltd. .....Petitioner.

Versus

The State of Himachal Pradesh and others .....Respondents.

2. CWP No.590 of 1999.

Mohan Meakin Ltd. and another .....Petitioners.

Versus

The State of Himachal Pradesh and others .....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?[1]Yes

For the Petitioner(s) : Mr.K.D.Sood, Senior Advocate with Mr.Dhananjay Sharma, Advocate.

For the Respondents : Mr.Shrawan Dogra, Advocate General with Mr.V.S.Chauhan, Additional Advocate General, Mr.Puneet Rajta, Deputy Advocate General, Mr.J.S.Guleria, Assistant Advocate General and Mr.R.N.Sharma, Advocate, for the respondents-State.

None for respondent No.4.

Tarlok Singh Chauhan, Judge.

The instant writ petitions were dismissed by this Court vide judgment dated 27.06.2007, however, the said judgment was assailed

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Whether the reporters of the local papers may be allowed to see the Judgment?Yes

before the Hon'ble Supreme Court and set aside vide order dated 18.12.2008 with the following directions:-

> *"We, therefore, are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly and the matter is remitted to the High Court for consideration of the Writ Petition filed by the appellant afresh. The parties shall be at liberty to file additional affidavits/evidence before the High Court, if they so desire.*
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> *The appeals are allowed. The respondents shall bear the costs of the appellant. Counsel's fee assessed at Rs.50,000/-."*

2. The learned counsel for the petitioner(s) would argue that the issue involved in the lis already stands adjudicated by the Hon'ble Supreme Court and these cases have been remanded only with a view to afford the State an opportunity to place on record additional documents so as to enable it to prove its claim with regard to "quid pro quo". Whereas, the learned Advocate General would argue that in terms of the mandate of the Hon'ble Supreme Court, these writ petitions have been remanded to this Court for consideration afresh.

3. The parties at ad idem that insofar as the earlier judgment passed by this Court on 27.06.2007 is concerned, the contentions as borne out from the pleadings have been correctly recorded. Therefore, taking assistance from the said judgment, the rival contentions of the parties can be stated thus:-

4. Briefly stated the facts of CWP No. 251 of 1999 are that the petitioner is a company incorporated under the Companies Act having its registered office in Solan Brewery and is carrying on the business of manufacture and sale of Indian Made Foreign Liquors, (I.M.F.S.) and beers etc. It was alleged that the petitioner company is having a Distillery at Kasauli in Solan District holding a licence in Form D-2. It was further

alleged that for blending of Malt Spirit produced at Kasauli Distillery, petitioner imported some quantities of Malt Spirit of over proof strength from its own Distillery at Mohan Nagar in Uttar Pradesh, after getting import permits from the Collector Excise, Himachal Pradesh. The petitioner also transported some quantities of Malt Spirit of over proof strength from M/s Rangar Breweries Ltd., Mehatpur, Distt. Una as well as some quantities of spirit from its Distillery at Mohan Nagar, Distt. Ghaziabad to Solan Brewery during the year 1997-98 and 1998-99.

5. It was further alleged that prior to 1.4.1996 there was no provision which required payment of permit/transport fee on transportation of I.M.F.S., country spirit, beer etc. It was alleged that it was for the first time that permit/transport fee was levied as per announcement for excise auctions for the year 1996-97 dated 12.3.1996. It was alleged that as per the letter issued by the Excise & Taxation Commissioner, Himachal Pradesh, a permit fee at the rate of Rs.2.50 per bulk litres on denatured spirit, Rs.2.00 per proof litre and Rs.1.00 per proof litre on foreign spirit and country liquor respectively was leviable. It was alleged that the permit fee was payable at the time of grant of permission and transport of liquor. A notification was issued in view of the above letter of Excise & Taxation Commissioner Shimla vide which the rates mentioned above were payable by a person who makes an application for the grant of permission to import and/or transport of the foreign liquor or country liquor or both. It was alleged that this fee was inserted by Notification dated 23.3.1996 but no permit/transport fee was charged by excise authorities at the time of issuing import permits for import of Malt Spirit from Mohan Meakin Limited, Mohan Nagar (U.P.) and accordingly vide letter dated 28.10.1997, the then Excise & Taxation

Officer had asked the petitioner to deposit a sum of Rs.8,21,992/- on account of the permit fee on the spirit imported by the petitioner during the year 1996-97. This was followed by other memos and the petitioner was finally asked to deposit sum of Rs.17,68,346/- upto 6.2.1999, failing which this amount will be declared as an arrear of land revenue and will be recoverable as such.

6. The petitioner further alleged that it had paid to the Government of H.P. per unit licence fee for the manufacture of Indian Made Foreign liquor/spirit under the Distillery licence for different period as detailed in para-11 of the petition. The petitioner also pleaded that it has paid export duty at the rate of Rs.1.00 per proof litre on Indian Made Foreign Spirit and at the rate of Rs.0.50 per B.L. on beer with alcoholic content at 5% with alcoholic content exceeding 5% as well as at the rate of Rs.0.75 per B.L. The petitioner also paid the import fee at the rate of Rs.6/- per P.L. on spirit imported by it. The notifications issued by the Assistant Excise & Taxation Commissioner, Solan, were alleged to be illegal, without jurisdiction and contrary to the Punjab Excise Act and the rules framed thereunder and the provisions of constitution of India and were alleged to be liable to be set aside. Hence, the present petition filed by the petitioner.

7. On similar allegations CWP No. 590 of 1999 was filed. The facts of the case are given as under:

8. The petitioner alleged that it is a company having its registered office at Solan Brewery in Himachal Pradesh and the company has been carrying on the business of manufacture and sale of Indian Made Foreign Spirit (hereinafter referred to as IMFS), It was alleged that the petitioner company has been granted permission to manufacture

IMFS and beer and the excise licence was granted by the State Government. It was alleged that till 1983 the State Government was charging Rs.1000/- per annum as fee for distillery licence and Rs.500/- per annum for brewery licence under the Excise Act. The same was raised to Rs.75,000/- per annum for distillery licence and Rs.10,000/- per annum for brewery licence in 1993. Thereafter, the State resorted to imposition of licence fee on per bottle basis and accordingly, the distillery licence fees which was only Rs.1000/- per annum in 1983 became around Rs. 12 Lacs in 1996-97 and the brewery licence has arisen from Rs.500/- per annum to over Rs.8 Lacs per annum in 1996-97. It was alleged that this fee was being sought to be charged in addition to the excise duty and various other levies which are being paid by the petitioner to the State Exchequer. The petitioner has challenged the imposition of licence fee as without an authority of law being unconstitutional, arbitrary and ultra vires the Constitution. It was alleged that the fee is not in the nature of fee but is in the nature of tax which is ultra vires the provisions of Constitution. It was alleged that the levy has no quid pro quo. The licence was issued in favour of the petitioner D-2 for distillery unit at Kasauli including the spirit bottling section of Solan Brewery as well as B-1 licence for Brewery at Solan was for the period upto 31.3.1999. The distillery licence renewal fee which was raised to Rs.75,000/- per annum in 1993 was fixed at Rs.2/- per unit of 750 mls. (one bottle) of IMFS subject to minimum of Rs.75,000/-. Similarly, the Brewery licence renewal fee was fixed at Rs.1/- per bottle unit of 650 mls, subject to a minimum of Rs.10,000/- per annum and these were enhanced as per notifications marked as Annexures P-8 and P-9.

9. The petitioner made a representation to the State Government and the licence fee was reduced vide notification dated 31.5.1994 From Rs.2/- per unit to Rs.0.25 per unit and that of Beer was reduced from Rs.1/- per bottle to Rs.10000/- per annum. The petitioner made another representation but of no avail. It was alleged that in 1997, the licence fee for IMFS was further raised from Rs.0.50 per unit to Rs.0.75 per unit of 750 mls. It was further raised to Rs. 0.90 per unit of 750 mls vide notifications (Annexures P-16 and P-16/A). The petitioner company had alleged that during the year 1996-97 and 1997-98 it had paid per unit licence fee as under:

Year	In respect of Distillery Licence in Form D-2.	In respect of Brewery Licence in Form B-1.
1996-97	Rs.11,60,888/-	Rs. 8,30,488/-
1997-98	Rs.10,26,842/-	Rs. 4,03,244/-

10. The petitioner company had also allegedly paid amount as manufacture and export duty/fee on export of IMFS and Beer during the period from 1.4.1996 to 31.3.1997 and 1.4.1997 to 31.3.1998 as under:

Year	On export of Indian Made Foreign Liquor.	On export of Beer.
1996-97	Rs. 12,25,000/-	Rs. 16,00,000/-
1997-98	Rs. 7,22,263.50/-	Rs. 5,75,835/-

11. The petitioner also alleged that it was also paying licence fees on license in Form L-1 and L-1A attached to Distillery and Brewery amounting to Rs. 60,000 and Rs. 1,60,000/-.

12. Thus it was pleaded that the impugned levies are detrimental to the petitioner as well as to the public at large as well as State of H.P. which levy is arbitrary and unconstitutional, hence the writ petition filed

challenging the levy of the fees raised by the State Government vide impugned notifications.

13. In reply filed by the respondents to the writ petition they have pleaded that the petitioner has been granted the Distillery licence on its request and subject to the conditions as stipulated in the said licence which was to manufacture various types of spirit. It was pleaded that the first condition of the licence was that the licensee shall observe the provisions of the Punjab Excise Act, 1 of 1914 and all rules made thereunder applicable to manufacture, issue and sale of spirit. The licence was granted for a period of one year which was in the nature of a contract subject to fulfillment of the conditions and strict observance of the rules governing the licence. It was pleaded that the Government is the exclusive owner of the privilege to trade in liquor and the notification is duly covered by Entry No. 8 of List II of the Seventh Schedule. Therefore, the permit was essentially regulatory in nature. It was pleaded that the objective of the permit is to regulate transport including import as well under Entry No. 8. Thus, the fee was leviable by the State in respect of services performed by it for the benefit of the individual, whereas a tax was payable for the common benefits conferred by the Government on all tax payers. It was pleaded that the amount of fee is based upon the expenses incurred by the State in rendering the services. It was pleaded that the Excise and Taxation Department regulates the production, manufacture, transport etc. ‘intoxicating liquors’ irrespective of whether those are meant for human consumption or otherwise and maintains not only a large establishment for regulation of these activities and observe compliance of the terms of the permit for the import and transport of liquors and, therefore, levy of fee was constitutional. Thus, it was pleaded

that the levy of fee envisaged under the provisions of Rule 7.2A of the Punjab Liquor Permit and Pass Rules, 1932 is applied to the State of H.P. which is in accordance with the law and the petitioner was liable to pay this amount with effect from 1.4.1996 as per the rate of fee amended from time to time. The fee was payable on making of an application for the grant of permission to import and/or transport of the foreign liquor or country spirit or both. It was pleaded that the fee is neither a tax nor duty so as to attract the provisions of Entry 42 of List I of Seventh Schedule to the "Constitution of India. The fee was leviable on import of liquor and was charged on every permit to import/transport the liquor whether inter-state or intrastate for the services. Thus, it was pleaded that the notification issued by the Excise Department cannot be said to be illegal and against the constitution and as such, there is no merit in the writ petition.

14. In reply to CWP No. 590 of 1999, it was pleaded by the respondents that the licence was granted in favour of the petitioner on the condition that the licensee shall observe the provisions of the Punjab Excise Act and rules made thereunder as applicable to manufacture, issue and sale of spirit. It was also submitted that the Punjab Distillery Rules, 1932, as applied to the State of Himachal Pradesh were framed under the Punjab Excise Act, 1914, which provide for the grant of licence in Form D-2 for the manufacturing of intoxicating liquors. Likewise the Punjab Brewery Rules provide for the grant of licence in Form B-1 for the manufacturing of Beer. It was pleaded that under Entries 8 and 51 of List II read with Entry 84 of List I of the Seventh Schedule to the Constitution, the State Legislature has the exclusive privilege to legislate on 'intoxicating liquors' or alcoholic liquor for human consumption.

Therefore, the State has the exclusive power to make law with respect to manufacture and production of intoxicating liquors. The Government was the exclusive owner of the privilege to trade in liquor. The citizens do not have any fundamental right to trade or carry on the business in the properties or rights belonging to the Government. The licences granted to the petitioner are in the nature of parting with the exclusive right of the State for a price or consideration and that too on its request. The petitioner as such using the right of the State is obliged to pay the price or consideration in lieu of that. The licences are granted for a period of one year which can be renewed by the Government on request and the petitioner has nowhere been put under compulsion to obtain the licence every year. Since the petitioner has been continuing with the licence after getting it renewed every year, he is estopped to challenge the impugned licence fee being arbitrary, exorbitant and illegal and more so when the burden of the fee is bound to pass on to the consumers.

15. Both the aforesaid petitions came to be dismissed by this Court vide judgment dated 27.06.2007, however, the matter was assailed by the petitioner(s) before the Hon'ble Supreme Court and the judgment passed by this Court was ordered to be set aside by the Hon'ble Supreme Court in its decision reported in ***Mohan Meakin Limited*** *versus* ***State of Himachal Pradesh and others (2009) 3 SCC 157*** (for short "***Mohan Meakin's case***") and the matter was remanded to this Court for consideration of the writ petitions afresh.

16. It is vehemently argued by Shri K.D.Sood, Senior Advocate, assisted by Shri Dhananjay Sharma, Advocate, for the petitioner(s) that these writ petitions have been remanded only for affording an opportunity

to place on record material so as to justify the fee as the same is based upon the principle of “quid pro quo”.

17. On the other hand, the learned Advocate General would argue that in terms of the operative portion of the judgment, the Hon’ble Supreme Court has not decided the case on merits and has simply remanded the case for decision afresh.

18. We have heard the learned counsel for the parties and gone through the material placed on record.

19. In order to appreciate the rival contentions of the parties, it would be necessary to first advert to the earlier decision of the Court to gather as to what was actually decided therein.

20. After reproducing the pleadings, it appears that the petitioner(s) raised a query as to whether the amount being claimed by respondent No.2 was in the shape of tax leviable by the Central Government under the provisions of Entry 42 of List I of the Seventh Schedule of the Constitution of India or was it in the nature of fees leviable by the State Government under the powers vested in it under Entries 8 and 66 of List II of the Seventh Schedule. This position had been conceded by the State Government in its reply wherein it was admitted that the amount being levied or claimed was not a “tax” but a “fee” and as such falls under List II of the Seventh Schedule and under Item No.8, the State Government was competent to levy the fees. The only question thereafter considered by this Court was whether this fees could be levied under the powers vested in the State Government or not.

21. After hearing the respective arguments, this Court while adjudicating CWP No.590 of 1999 concluded as follows:-

> *“It is clear from the above discussion that the fees are mainly chargeable for the services being rendered by the State*

Government and though in the earlier decisions it was held that for the charging of levy of any fees, the element of quid pro quo was a sine-qua-non but as per the later decisions it is not necessary and no material is required to be placed on record and the amount being spent extra for the services rendered by the State Government can be presumed only. In the present case, the State has been burdened with extra work of regulating of import of spirit in the State, due to the import of the same by the petitioners from outside the State. This necessarily involves the maintaining of stationery for issuing of export permits, maintaining a record for issuing a licence as well as keeping a surveillance that the import of the spirit was being made in accordance with the permit issued by the State Government which requires necessarily deployment of special staff for the extra work done by the State Government in lieu of the extra services taken by the petitioners. Coming to the impugned notifications I have already mentioned above that the levy was being made at the rate of Rs.2.50, Rs.2.00 and Rs.1.00 per proof litre on foreign spirit or denatured spirit which by any stretch of imagination cannot be said to be excessive. There is not such substance in the plea raised by the petitioners that the petitioners were paying salary of the staff kept at the Brewery, Solan such the same was in pursuance of the contract awarded in favour of the petitioners, but the necessity to maintain additional staff arose because of the import licence taken by the petitioners for importing spirit from outside the State and as such, the State was competent to levy the fees without rendering the necessary particulars of the charges being incurred extra for issuance of the licence or for maintaining a proper check that the spirit was being imported in accordance with the licence or not."

22. On the basis of the aforesaid reasoning, CWP No.251 of 1999 was disposed of and the claim of the petitioner that before levying of the fee, the expenditure likely to be incurred or to be incurred was "quid pro quo" before such a levy could be imposed was rejected by reiterating that this fee could be levied by the State Government under its powers and there was no condition of quid pro quo in view of the latest

law of the Hon'ble Apex Court and, therefore, the impugned notifications issued under the provisions of the Punjab Excise Act and Rules framed thereunder were within the legislative competence of the State and, therefore, could not be held ultra vires of the Constitution.

23. As regards CWP No.590 of 1999, this Court came to the conclusion that once the State Government had the power to issue notification, then the petitioner could take no exception to the same, more particularly, when it was a contract between the parties under which the petitioner was liable to pay the fee as imposed by the State Government during the subsistence of the contract. Therefore, once the licence fee was enhanced in exercise of the powers vested in the State Government under the Constitution and under the provisions of the Punjab Excise Act and Rules there under, the licence fee could have been enhanced by the State Government since the petitioner(s) had no right to deal in the trade of liquor. In addition to that, the Court also observed that the burden of fees was to pass to the consumers and was not affecting any fundamental right of the petitioner(s) to indulge in any trade or business. As such, the challenge made to the impugned notifications was not liable to be quashed in any manner whatsoever.

24. Before adverting to the respective contentions of the parties, we may make note of certain provisions which are relevant for the decision of the instant cases.

25. Article 245 of the Constitution, which is in Part XI of the Constitution, pertaining to relations between the Union and the State, contemplates the extent to which laws can be made by the Parliament or the Legislatures of the States. The provision contemplates that subject to the provisions of the Constitution, Parliament is empowered

to make law for the whole or any part of the territory of India and the Legislature of a State for whole or any part of the State.

26. Article 246 of the Constitution contemplates that notwithstanding anything contained in Clauses (2) and (3) of Article 246, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List-I in the Seventh Schedule, i.e. the Union List. Clause (2) of this Article contemplates that both the Parliament, subject to Clause (3), and the State Legislature, subject to Clause (1), will have power to make laws with respect to matters enumerated in List III, i.e. the Concurrent List, and thereafter, Clause (3) speaks about power of the State to make laws on matters enumerated in List -II, i.e. the State List.

27. Finally, Article 254 of the Constitution makes a provision to deal with the laws which are inconsistent and are made by the Parliament and the State. Clause (1) of Article 254 contemplates that if any provision of a law made by a Legislature of a State is repugnant to any provision of a law made by the Parliament, which Parliament is competent to enact or any provision of the existing law with respect to matters enumerated in the Concurrent List, then, subject to provisions of Clause (2), the law made by the Parliament, whether passed before or after the law made by the Legislature of the State shall prevail. Clause (2) contemplates that when a law made by the State Legislature with respect to a matter enumerated in the Concurrent List contains any provision repugnant to any provision or of any law earlier made by the Parliament and law made by the State has received the assent of the President, the law made by the State shall prevail, otherwise, the law made by the Union shall prevail.

28. As far as various entries in Schedule VII with which we are concerned, they read as under:

> **"Relevant Entries of List I**
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> *7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.*
>
> *52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.*
>
> *84. Duties of excise on tobacco and other goods manufactured or produced in India except-*
>
> > *(a) alcoholic liquors for human consumption.*
> > *(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.*
>
> **Relevant Entries of List II**
>
> *8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.*
>
> *51.(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.*
>
> *66. Fees in respect of any of the matters in this List, but not including fees taken in any court."*

29. The learned Advocate General has invited our attention to para-8 of the judgment in ***Mohan Meakin's case*** to canvass that the issue involved in this case was not considered by the Hon'ble Supreme Court while remanding the case since the arguments therein were confined to "industrial alcohol" and "rectified spirit" and did not relate to "malt spirit of overproof strength" which otherwise is the subject-matter of the instant lis.

30. We have considered the said contentions and find the same to be highly misplaced, apart from being based on a complete misreading of the judgment in ***Mohan Meakin's case*** (supra), more particularly, para-8 which reads thus:-

> "8. *Mr. Anoop G. Chaudhary and Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the appellant, would submit:*
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> > *(i) Transportation of industrial alcohol and/ or rectified spirit being not within the legislative competence of the State, it cannot exercise any control thereover.*
> > *(ii) The High Court committed a serious error as it proceeded on the premise that there does not exist any distinction between import of potable liquor and that of Malt Spirit of over proof strength.*
> > *(iii) The element of quid pro quo being inherent in the levy of fee and as no material was produced by the State to justify its demand, the impugned judgment cannot be sustained."*

31. It is, thus, evidently clear that one of the questions before the Hon'ble Supreme Court was with respect to whether this Court had committed a serious mistake as it proceeded on the premise that there does not exist any distinction between import of "potable liquor" and that of "malt spirit of over proof strength". The Hon'ble Supreme Court after taking note of the various provisions of the Constitution of India and further taking into consideration that the Punjab Excise Act was a pre-constitutional statute and was thus proceeded to observe in para-16 as under:-

> *"16. The appellant herein contends that it had imported malt spirit of overproof strength and the application for grant of permit vis-à-vis levy of fee pertained only thereto. It has furthermore been contended that the malt spirit imported by it being rectified spirit, it is not potable as per ISI specifications. It is not bought and sold*

> *in the market as potable liquor. It is used as a raw material for blending to manufacture IMFL. Contention of the appellant, therefore, is that it is not an excisable article within the meaning of the provisions of Section 3(6) of the Act."*

32. The Hon'ble Supreme Court thereafter examined the various provisions of the Act and the Rules framed there under like Punjab Liquor Permit and Pass Rules, 1932, Excise Barriers' Rules, 1939 and held that the State alone had the exclusive authority to grant licences and the petitioner being a licensee was bound to abide by the terms and conditions of the licence as also the rules framed in this behalf. It was further held that the State possessed the right to have complete control over all aspects of intoxicants viz. manufacture, collection, sale and consumption etc. and also had the exclusive right to manufacture and sell liquor and to transfer the said right with a view to raise revenue. That apart, it was held that the right to fix the amount of consideration for grant of said privilege for manufacturing or vending liquor was also beyond any doubt or dispute.

33. It was specifically held in para 24 of the judgment in ***Mohan Meakin's case*** (supra) that the State has to make distinction between a "malt spirit of overproof 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. However, "industrial alcohol" or "spirit" having regard to Entry 52 of List I of the Seventh Schedule of the Constitution cannot be the subject matter of any regulation or control of the State, it being not "alcoholic liquor for human consumption" and placed reliance upon the judgment of the Hon'ble Supreme Court of Hon'ble Seven Judge in ***Synthetics and Chemicals Ltd. and others*** *vs.* ***State of U.P.***

and others (1990) 1 SCC 109. It is apt to reproduce para-24 of the judgment which reads thus:-

> "*24. 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 of India 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 of India cannot be subject matter of any regulation or control by the State; it being not alcoholic liquor for human consumption. The question is well-settled in view of the decision of a Seven-Judge Bench of this Court in Synthetics and Chemicals Ltd. and Others v. State of U.P. and Others [(1990) 1 SCC 109] wherein it was categorically held: (SCC pp. 143-44, paras 53-54)*
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> > *"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."*
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> *(emphasis in original).*

34. After making the aforesaid observations, it was observed that the doctrine of *res extra commercium* as applied by this Court in respect of “potable alcohol” would have no application to “industrial alcohol” which is produced in an industry controlled and regulated in terms of Entry 52 of List I of the Seventh Schedule of the Constitution of India.

35. After making the aforesaid pertinent observations, the Hon’ble Supreme Court thereafter proceeded to observe that if manufacture and transport of “industrial alcohol” and/or “malt spirit of overproof strength” is not *res extra commercium* in view of the binding decision in ***Synthetics and Chemicals Ltd.’s case*** (supra), it would be axiomatic that the provisions of Article 301 of the Constitution of India could be made applicable in view of the exclusive legislative competence

of the Parliament having regard to Entry 42 of List I of the Seventh Schedule of the Constitution of India and the State's power to impose compensatory tax and/or fee would be limited as envisaged by Article 304(b) of the Constitution of India. The Hon'ble Supreme Court specifically observed that the State has not been able to make any distinction between import and export of "spirit" and "potable liquor".

36. After referring to the representations of the petitioner and referring to the counter affidavit filed by the State, the Hon'ble Supreme Court proceeded to observe that even the State asserts its right to regulate the business of liquor including overproof spirit in terms of the provisions of the Act and the Rules framed there under. However, in terms of the Rules, the fee specified therein would not be payable on denatured spirit, rectified spirit or perfumed spirit and the transport shall not include the transport of foreign spirit or country spirit in the course of export inter-State or across the custom frontier of India. The levy, therefore, ex facie could not have been imposed on rectified spirit. It was further held that the jurisdiction of the State to impose such a levy would be limited. After making a detailed reference to what is "fee" and "tax" and difference between the same, the Hon'ble Supreme Court thereafter in para 40 of the judgment in ***Mohan Meakin's case*** (supra) observed that the respondent-State in fact had not produced any material whatsoever before this Court to justify the levy of fee.

37. Notably, not only the appeals filed by the petitioner(s) herein were allowed but even the respondents were ordered to bear the costs of the appellants assessed at `50,000/-. Thus, the contention raised by the learned Advocate General that there was no adjudication by the Hon'ble Supreme Court is without any merit and contrary to what has

been decided by the Hon'ble Supreme Court as it is beyond a pale of doubt that the Hon'ble Supreme Court has categorically held that malt spirit of overproof strength having regard to Entry 52 of List I of the Seventh Schedule of the Constitution of India cannot be the subject matter of any regulation or control of the State "*it being not alcoholic liquor for human consumption"*

38. A contention is thereafter raised by the learned Advocate General that malt spirit of overproof strength by subsequent dilution becomes potable and fit for human consumption and, therefore, liable for fee. However, the said contention has been raised simply to be rejected. Not only the issue stands answered by the judgment in ***Mohan Meakin's case***, but earlier to that a similar issue came up for consideration before the Patna High Court in ***New Swadeshi Sugar Mills Ltd. and another*** *vs.* ***State of Bihar and others (1983) PLJR 105*** wherein it was contended that rectified spirit did not constitute an excisable item under the Bihar Excise Act as the rectified spirit by its subsequent dilution became potable and fit for human consumption and, therefore, liable for duty.

39. The aforesaid judgment came to be assailed before the Hon'ble Supreme Court in ***State of Bihar and others*** *vs.* ***New Swadeshi Sugar Mills Ltd. and another (2003) 11 SCC 478*** wherein it was held as under:-

> *"1.We find that the conclusion of the High Court that no duty can be levied by the appellant State on rectified spirit, having regard to the provisions of the Constitution, has been upheld by this Court in the case of Synthetics and Chemicals Ltd. v. State of U.P. (1990) 1 SCC 109. It has been held there that the provisions of various State Acts which purport to levy a tax or charge upon industrial alcohol, also called rectified spirit and alcohol used and usable for industrial purposes, are unconstitutional.*

2. Having regard to the fact that the provision in the State Act imposing the levy is unconstitutional, it is unnecessary to go into the appellant' argument based on a rule made in exercise of the rule-making power in the State Act. The rule concerned relates to duty to be paid on rectified spirit which is transported, a prescribed quantity being allowed to be deducted by way of leakage or evaporation. In the notice issued to the respondents it was such duty which was claimed in the sum of Rs.8,62,678. Duty itself not being leviable, that claim must also be held to be invalid. 3. The appeal is, accordingly, dismissed. There shall be no order as to costs."

40. A different view at variance with above, however, came to be taken by a Bench of two Hon'ble Judge of the Hon'ble Supreme Court in ***Bihar Distillery and another*** *vs.* ***Union of India and others (1997) 2 SCC 727***. The petitioners therein had questioned the legislative competence of the State Government to deal with rectified spirit unfit for human consumption in view of the promulgation of IDR Act contending that industrial alcohol was the exclusive prerogative of the Parliament to legislate. Summing up the consideration the Hon'ble Supreme Court in para 23 of its report held as follows:-

"23. We are of the respectful and considered opinion that the decision in Synthetics did not deal with the aspects which are arising for consideration herein and that it was mainly concerned with industrial alcohol, i.e., denatured rectified spirit. While holding that rectified spirit is industrial alcohol, it recognised at the same time that it can be utilised for obtaining country liquor [by diluting it] or for manufacturing I.M.F.Ls. When to decision says that rectified spirit with 95% alcohol content v/v is "toxic", what it meant was that if taken as it is, it is harmful and injurious t health. By saying "toxic" it did not mean that it cannot be utilised for potable purposes either by diluting it or by blending it with other items. The undeniable fact is that rectified spirit is both industrial alcohol as well as a liquor which can be converted into country liquor just by adding water. It is also the basis substance from

*which I.M.F.Ls. are made. [Denatured rectified spirit, of course, is wholly and exclusively industrial alcohol.] This basic factual premise, which is not and cannot be denied by any one before us***, raises certain aspects for consideration herein which were not raised or considered in Synthetics. Take a case where two industries `A' and*

> *----------***If rectified spirit is toxic and unfit for human consumption, why is it necessary to denature it, asks the learned Additional Advocate General for the State of Uttar Pradesh. Denaturing is meant precisely for making what is meant for human consumption unfit for human consumption, he says.*

`B' come forward with proposals to manufacture rectified spirit; `A' says that it proposes to manufacture rectified spirit and then denature it immediately and sell it as industrial alcohol while `B' says that it will manufacture rectified spirit and utilise it entirely for obtaining country liquor [arrack or by whatever other name, it may be called] or for manufacturing I.M.F.Ls. from out of it or to supply it to others for the said purpose. According to Synthetics, `A' is under the exclusive control of the Union and the only powers of the State are those as are enumerated in Para 86 quoted above. But what about `B'? The rectified spirit manufactured by it is avowedly meant only for potable purposes. Can it yet be called "industrial alcohol"? Can it still be said that the State concerned has no power or authority to control and regulate industry `B' and that the Union alone will control and regulate it until the potable liquors are manufactured? The Union is certainly not interested in or concerned with manufacture or process of manufacture of country liquor or I.M.F.Ls. Does this situation not leave a large enough room for abuse and misuse of rectified spirit? It should be remembered that according to many States before us, bulk of the rectified spirit produced in their respective States is meant for and is utilised for obtaining or manufacturing potable liquors. Can it be said even in such a situation that the State should fold its hands and wait and watch till the potable stage is reached. Yet another and additional circumstance is this: it is not brought to our notice that any notified orders have been issued under Section 18-G of the I.D.R. Act regulating the sale, disposal or use of rectified spirit for the purpose of obtaining or manufacturing potable liquors which means that by virtue of Entry 33 of List-III, the States do

have the power to legislate on this field - field not occupied by any law made by the Union. It is these and many other situations which have to be taken into consideration and provided for in the interests of law, public health, public revenue and also in the interests of proper delineation of the spheres of the Union and the States. The line of demarcation can and should be drawn at the stage of clearance/removal of the rectified spirit. 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. This calls for a joint control and supervision of the process of manufacture of rectified spirit and its use and disposal. We proceed to elaborate:

> *(1) So far as industries engaged in manufacturing rectified spirit meant exclusively for supply to industries [industries other than those engaged in obtaining or manufacture of potable liquors], whether after denaturing it or without denaturing it, are concerned, they shall be under the total and exclusive control of the Union and be governed by the I.D.R. Act and the rules and regulations made thereunder. In other words, where the entire rectified spirit is supplied for such industrial purposes, or to the extent it is so supplied, as the case may be, the levy of excise duties and all other control including establishment of distillery shall be that of the Union. The power of the States in the case of such an industry is only to see and ensure that rectified spirit, whether in the course of its manufacture or after its manufacture, it not diverted or misused for potable purposes. They can make necessary regulations requiring the industry to submit periodical statements of raw material and the finished product [rectified spirit] and are entitled to verify their correctness. For this purpose, the States will also be entitled t post their staff in the distilleries and levy reasonable regulatory fees to defray the cost of such staff, as held by this Court in Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. v. State of Gujarat & Anr. [1992 (1) S.C.R. 391] and Gujchem Distillers India Ltd. v. State of Gujarat & Anr. [1992 (1) S.C.R. 675].*
>
> *(2). So far as industries engaged in the manufacture of rectified spirit exclusively for the purpose of obtaining or manufacturing potable liquors - or supplying the same to the State government or its nominees for the said purpose - are concerned, they shall be under the total and exclusive control of the States in all respects and at all stages including the establishment of the distillery. In other words, where the entire rectified spirit produced is supplied for potable purposes - or to the extent it is so supplied, as the case may be - the levy of excise duties and all other control shall be that of the States. According to the State governments, most of the distilleries fall under this category.*

(3) So far as industries engaged in the manufacture of rectified spirit, both for the purpose of (a) supplying it to industries [other than industries engaged in obtaining or manufacturing potable liquors/intoxicating liquors] and (b) for obtaining or manufacturing or supplying it to Governments/persons for obtaining or manufacturing potable liquors are concerned, the following is the position: the power to permit the establishment and regulation of the functioning of the distillery is concerned, it shall be the exclusive domain of the Union. But so far as the levy of excise duties is concerned, the duties on rectified spirit removed/cleared for supply to industries [other than industries engaged in obtaining or manufacturing potable liquors], shall be levied by the Union while the duties of excise on rectified spirit cleared/removed for the purposes of obtaining or manufacturing potable liquors shall be levied by the concerned State government. The disposal, i.e., clearance and removal of rectified spirit in the case of such an industry shall be under the joint control of the Union and the concerned State to ensure evasion of excise duties on rectified spirit removed/cleared from the distillery. It is obvious that in respect of these industries too, the power of the States to take necessary steps to ensure against the misuse or diversion of rectified spirit meant for industrial purposes [supply to industries other than those engaged in obtaining or manufacturing potable liquors] to potable purposes, both during and after the manufacture of rectified spirit, continues unaffected. Any rectified spirit supplied, diverted or utilised for potable purposes, i.e., for obtaining or manufacturing potable liquors shall be supplied to and/or utilised, as the case may be, in accordance with the concerned State Excise enactment and the rules and regulations made thereunder. If the State is so advised, it is equally competent to prohibit the use, diversion or supply of rectified spirit for potable purposes.

(4) It is advisable - nay, necessary - that the Union government makes necessary rules/regulations under the I.D.R. Act directing that no rectified spirit shall be supplied to industries except after denaturing it save those few industries [other than those industries which are engaged in obtaining or manufacturing potable liquors] where denatured spirit cannot be used for manufacturing purposes.

(6) So far as rectified spirit meant for being supplied to or utilised 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 - apart from other powers referred to above.

(7) The power to permit the establishment of any industry engaged in the manufacture of potable liquors including I.M.F.Ls., beer, country liquor and other intoxicating drinks is exclusively vested in the States. The power to prohibit and/or regulate the manufacture, production, sale, transport or consumption of such intoxication liquors is equally that of the States, as held in McDowell."

41. This judgment, however, came to be doubted in ***Deccan Sugar & Abkari Company Limited*** *vs.* ***Commissioner of Excise A.P. (1998) 3 SCC 272*** in view of the Constitution Bench judgment in

Synthetics & Chemicals Ltd. (supra) and the matter was referred to a larger Bench.

42. A three Judge Bench of the Hon'ble Supreme Court in ***Deccan Sugar and Abkari Company Limited*** *vs.* ***Commissioner of Excise A.P. (2004) 1 SCC 243*** held in para-2 as follows:-

> *"2. It is settled by the decision of this Court in* ***Synthetics and Chemicals Ltd. v. State of U.P. (1990) 1 SCC 109*** *that the State Legislature has no jurisdiction to levy any excise duty on rectified spirit. The State can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category the State Legislature cannot impose any excise duty. The decision in* ***Synthetics and Chemicals Ltd. v. State of U.P. (1990) 1 SCC 109*** *has been followed in* ***State of U.P. v. Modi Distillery (1995) 5 SCC 753*** *where certain wastage of ethy1 alcohol was sought to be taxed. This Court following the decision in Synthetics and Chemicals Ltd came to the conclusion that this cannot be done."*

43. In ***State of U.P. and others*** *vs.* ***Vam Organic Chemicals Ltd. and others (2004) 1 SCC 225***, the Hon'ble Supreme Court after taking note of the earlier judgments held that the State cannot legislate in respect of industrial alcohol despite the fact that such industrial alcohol has the potential to be used to manufacture alcoholic liquor. It was also noticed that the State Government could only charge regulatory fee for the purpose of payment of salary for the staff and to see that no non-potable alcohol was converted into potable alcohol. The burden of showing a broad co-relation between the fee charged and administrative expenses for imposing a regulatory fee was upon the State Government. It is apt to reproduce paras 43 and 44 which read thus:-

> *"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, 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 filed of legislative competence as envisaged in Bihar Distillery industrial alcohol for industrial purposes falls within the exclusive control of the Union and according to Bihar Distillery "denatured spirit, of course, is wholly and exclusively industrial alcohol". (SCC p. 742, para 23)

44. Besides, the fee is required to be justified with reference to the cost of such regulation. The industry is already paying a fee under Rule 2 for such regulation. Indeed the justification for levying the fee under Rule 3(a) is the identical justification given by the State for levying the fee under Rule 2. Presumably, a full complement of Excise Officers and staff are appointed by the State in the Excise Department to carry out their duties under the Act to oversee, control and keep duty on the various kinds of intoxicants under the Act. Having regard to the decision in Vam Organics I, we must also assume that apart from the normal strength, additional officers and staff were appointed to regulate the denaturation of the industrial alcohol. There is nothing to show that there has been any deployment of any additional staff to over-see the possibility of renaturation of the denatured spirit."

44. A reference to the Hon'ble seven Judge Bench decision in ***Synthetics & Chemicals Ltd.'s case*** was made by the Hon'ble Supreme Court, however, it would be pertinent to refer to certain other questions as have been decided in the aforesaid decision.

"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 supplied)

45. Entry 8 in List II deals with intoxicating liquor, however, the question would be whether this entry pertaining to intoxicating liquor is confined to potable liquor or includes all liquors. The answer to this question can be found in ***Indian Mica Micanite Industries*** *vs.* ***The State of Bihar and others (1971) 2 SCC 236*** wherein it was held that the expression of a Constitution must be understood in its common and normal sense, industrial alcohol is incapable of being consumed by normal human being and the argument that the expression “consumption” would include non-potable alcohol unfit for human consumption or otherwise was rejected and it was held that the expression “consumption” appearing in various entries and parts of the

Constitution must be understood in the sense of direct physical intake by human beings, in this regard and it was held that the word “consumption” means that it is with reference to the alcohol, which is only fit for human consumption.

46. The Hon’ble Supreme Court after holding that the pith and substance of the Legislature has to be looked into proceeded to interpret the expression “intoxicating liquor” in paras 74 to 77 in the following manner:-

> *“74. It has to be borne in mind that by common standards ethyl alcohol (which has 95%) is an industrial alcohol and is not fit for human consumption. The petitioner and the appellants were manufacturing ethyl alcohol (95%) (also known as rectified spirit) which is an industrial alcohol. ISI specification has divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverage and industrial alcohols are clearly and differently treated. Rectified spirit for Industrial purposes is defined as "spirit purified by distillation having a strength not less than 95% of volume by ethyl alcohol". Dictionaries and technical books would show that rectified spirit (95%) is an industrial alcohol and is not potable as such. It appears, therefore, that industrial alcohol which is ethyl alcohol (95%) by itself is not only non-potable but is highly toxic. The range of spirit of potable alcohol is from country spirit to whisky and the Ethyl Alcohol content varies between 19 to about 43 per cent. These standards are according to the ISI specifications. In other words, ethyl alcohol (95%) is not alcoholic liquor for human consumption but can be used as raw material input after processing and substantial dilution in the production of Whisky, Gin, Country Liquor, etc. In many decisions, it was held that rectified spirit is not alcohol fit for human consumption. Reference may be made in this connection to Delhi Cloth and General Mills Co. Ltd. v. The Excise Commissioner, U.P. Allahabad and Anr. Special Appeal No. 177 of 1970, decided on 29th March, 1973. In this connection, it is important to bear in mind the actual provision of entry 8 of list II. Entry 8 of list II*

cannot support a tax. The above entry contains the words "intoxicating liquor". The meaning of the expression "intoxicating liquor" has been tightly interpreted by the Bombay High Court in the Balsara's case (supra). The decision of the Bombay High Court is reported in AIR 1951 Bombay 210, at p. 214. In that light, perhaps, the observations of Fazal Ali, J. in Balsara's case (supra) requires consideration. It appears that in the light of the new experience and development, it is necessary to state that "intoxicating liquor" must mean liquor which is consumable by human being as it is and as such when the word "liquor" was used by Fazal Aft, J., they did not have the awareness of full use of alcohol as industrial alcohol. It is true that alcohol was used for industrial purposes then also, but the full potentiality of that user was not then comprehended or understood. With the passage of time, meanings do not change but new experiences give new colour to the meaning. In Har Shankar's case (supra), a bench of five judges have surveyed the previous authorities. That case dealt with the auction of the right to sell potable liquor. The position laid down in that case was that the State had the exclusive privilege or right of manufacturing and selling liquor and it had the power to hold public auctions for granting the right or privilege to sell liquor and that traditionally intoxicating liquors were the subject matters of State monopoly and that there was no fundamental right in a citizen to carry on trade or business in liquor. All the authorities from Cooverji Barucha's case (1954) SCR 673 to Har Shankar's case (supra) dealt with the problems or disputes arising in connection with the sale, auction, licensing or use of potable liquor.

75. Only in two cases the question of industrial alcohol had come up for consideration before this Court. One is the present decision which is under challenge and the other is the decision in Indian Mica & Micanite Industries's case (supra). In the latter case, in spite of the earlier judgments including Bharucha's case, denatured spirit required for the manufacture of micanite was not regarded as being within the exclusive privilege of the State. It appears that in that decision at p. 321 of the report, it was specifically held that the power of taxation with regard to alcoholic liquor not fit for human consumption, was within the

legislative competence of central legislature. The impost by the State was held to be justifiable only if it was a fee thereby impliedly and clearly denying any consideration or price for any privilege. For the first time, in the Synthetics & Chemicals Ltd. 's case (supra), the concept of exclusive privilege was introduced into the area of industrial alcohol not fit for human consumption.

76.Balsara's case (supra) deal with the question of reasonable restriction on medicinal and toilet preparations. In fact, it can safely be said that it impliedly and sub-silentio clearly held that medicinal and toilet preparations would not fall within the exclusive privilege of the State. If they did there was no question of striking down of section 12 (c) & (d) and section 13(b) of the Bombay Prohibition Act, 1949 as unreasonable under Article 19(1)(f) of the Constitution because total prohibition of the same would be permissible. In K.K. Narula's case (1967) 3 SCR 50, it was held that there was right to do business even in potable liquor. It is not necessary to say whether it is good law or not. But this must be held that the reasoning therein would apply with greater force to industrial alcohol.

77. Article 47 of the Constitution imposes upon the State the duty to endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and products which are injurious to health. If the meaning of the expression "intoxicating liquor" is taken in the wide sense adopted in Balsara's case, it would lead to an anomalous result. Does Article 47 oblige the State to prohibit .even such industries as are licensed under the IDR Act but which manufacture industrial alcohol? This was never intended by the above judgments or the Constitution. It appears to us that the decision in the Synthetics & Chemicals Ltd. 's case (supra) was not correct on this aspect."

47. The legal position was summed up in paras 85, 86 and 88 which read thus:

"85. After 1956 amendment to the IDR Act bringing alcohol industries (under fermentation industries) as item 26 of the First

Schedule to IDR Act the control of this industry has vested exclusively in the Union. Thereafter, licences to manufacture both potable and non potable alcohol is vested in the Central Government. Distilleries are manufacturing alcohol under the Central Licences under IDR Act. No privilege for manufacture even ii one existed, has been transferred to the distilleries by the State. The State cannot itself manufacture industrial alcohol without the permission of the Central Government. The States cannot claim to pass a right which these do not possess. Nor can the States claim exclusive right to produce and manufacture industrial alcohol which are manufactured under the grant of licence from the Central Government. Industrial alcohol cannot upon coming into existence under such grant be amenable to States' claim of exclusive possession of privilege. The State can neither rely on entry 8 of list I1 nor entry 33 of list III as a basis for such a claim. 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 clear intention to occupy the whole field. Even otherwise sections like section 24A and 24B of the U.P. Act do not constitute any regulation in respect of the industrial alcohol as product of the scheduled industry- On the contrary, these purport to deal with the so-called transfer of privilege regarding manufacturing and sale. This power, admittedly, has been exercised by the State purporting to act under entry 8 of list II and not under entry 33 of list III.

86.The position with regard to the control of alcohol industry has undergone material and significant change after the amendment of 1956 to the IDR Act. After the amendment, the State is left with only the following powers to legislate in respect of alcohol:

> *(a) It may pass any legislation in the nature of prohibition of potable liquor referable to entry 6o of list II and regulating powers.*
>
> *(b) It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol.*

> *(c) The state may charge excise duty on potable alcohol and sales tax under entry 52 of list II. However, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the state on industrial alcohol.*
>
> *(d) However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo. See in this connection, the observations of India Mica's case (supra).*
>
> *88. On an analysis of the aforesaid decisions and practice, we are clearly of the opinion that in respect of industrial alcohol the States are not authorised to impose the impost they have purported to do. In that view of the matter, the contentions of the petitioners must succeed and such impositions and imposts must go as being invalid in law so far as industrial alcohol is concerned. We make it clear that this will not affect any impost so far as potable alcohol as commonly understood is concerned. It will also not affect any imposition of levy on industrial alcohol fee where there are circumstances to establish that there was quid pro quo for the fee sought to be imposed. This will not affect any regulating measure as such."*

48. It is, thus, evidently clear that the State Government cannot claim to have power to legislate on alcohol of "malt spirit of overproof strength" merely on the ground that the same can be made potable after dilution. The State at best can only lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable liquor.

49. Even otherwise, the issue insofar as this Court is concerned is no longer *res integra* in view of a Division Bench judgment of this Court in ***Ranger Breweries Ltd.*** *vs.* ***State of H.P. and others 2010 (3) Shim. L.C. 98*** wherein the question posed before the Court was whether the State is justified in levying the duty/duties on the wastage of spirit in the

process of re-distillation. While answering the question, it was held that pre-constitutional levy of duty, as proposed, is permissible only if the same is duly prescribed. However, since the duty came to be prescribed under the Rules, for the first time, only in the year 1999 and re-distillation for the purpose of manufacturing liquor admittedly was prior to 1999 and, therefore, there could be no levy of duty on wastage of re-distillation process. The contention of the petitioner was that any duty is permissible only on alcoholic liquor fit for human consumption, whereas, the spirit admittedly that was being supplied to the distillery for the purpose of distillation was not alcoholic liquor fit for human consumption and the duty that was proposed to be levied was on spirit not fit for human consumption. This Court held that excise duty was permissible by the State only on alcoholic liquor fit for human consumption and it shall be apt to reproduce the following observations:-

> *"4. We do not think that there can be any formidable resistance on this argument advanced by the petitioner, in view of the well settled position that excise duty is permissible by the State only on alcoholic liquor fit for human consumption. The Supreme Court has dealt with these aspects in quite a few decisions. In* ***Mohan Meakins Ltd. Versus Excise & Taxation Commissioner, H.P. & others, reported in (1997) 2 SCC, 193,*** *it has been held that :*
>
> > *"6. It is, thus, clear that the range of potable alcohol varies between country spirit to whiskey and the ethyl alcohol. The alcoholic strength of each excisable article and its percentage varies as per the ISI specifications but intoxicating liquor necessarily means only that liquor which was consumable by human beings as it was. The State of levying excise duty upon alcoholic liquor arises when excisable article is brought to the stage of human consumption with the requisite alcoholic strength thereof. It is only the final produce which is relevant.*
> >
> > *7. Thus, the final product of the beer is relevant excisable article excigible to duty under Section 31 of the Act when it passes through fine filter press and received in the bottling tank. The question is at what stage the duty is liable to be paid? Section 23 specifically envisages that until the payment of duty is made or bond is executed in that behalf as per the procedure and acceptance by the Financial Commissioner, the finished product, namely, the beer in this case, shall not be removed from the place at which finished product was stored either in a warehouse*

> *within factory premises or precinct or permitted place of usage. Under these circumstances, the point at which excise duty is exigible to duty is the time when the finished product, i.e., beer was received in bottling tank or the finished product is removed from the place of storage or warehouse etc.*

5. In ***Bihar Distillery and another versus Union of India and others,*** *reported in* ***(1997) 2 SCC,727,*** *it has been held at paragraph 23 and to extent relevant, the same is as follows:*

> *"23.....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 State....."*
>
> *(6) So far as rectified spirit meant for being supplied to or utilised for potable purposes is concerned, it shall be under the exclusive control of the State from the moment it is cleared/removed for that purpose from the distillery-apart from other powers referred to above."*

6. In ***Deccan Sugar & Abkari Co. Ltd. Versus Commissioner of Excise, A.P, (2004) 1 SCC 243,*** *it has been held that:*

> *"2. It is settled by the decision of this Court in Synthetics and Chemicals Ltd. vs. State of U.P. that the State Legislature has no jurisdiction to levy any excise duty on rectified spirit. The State can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category the State Legislature cannot impose any excise duty. The decision in Synthetics and Chemicals Ltd. v. State of U.P. has been followed in State of U.P. v. Modi Distillery where certain wastage of ethyl alcohol was sought to be taxed. This Court following the decision in Synthetics and Chemicals Ltd came to the conclusion that this cannot be done."*

7. As already stated above, the State has no case that the duty that was charged on the petitioner is on liquor, that is fit for human consumption. Duty is charged on spirit which is not a potable liquor. The learned Additional Advocate General contends that even if excise duty is not leviable, duty on spirit is leviable under the Punjab Excise Act, 1914. No doubt, being a pre-constitutional levy, in case there was enabling provision for such levy on spirit, it is permissible in view of the Article 277 of the Constitution of India, which reads as follows:

> *"**Savings**.- Any taxes, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area*

> *may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament of law."*

19. Even otherwise, it only pertains to the rate of duty and the duty is leviable only if it is prescribed under the Rules. The Rules regarding levy of duty for wastage element was prescribed for the first time only in 1999. Even otherwise also, the fiscal orders will not apply since there is no process of removal of spirit from distillery in the process of re-distillation.

20. The Excise and Taxation Commissioner has proposed to levy the duty on the entire wastage since no wastage element had been prescribed during re-distillation, in the case of the petitioner, prior to 1999. The same view has been affirmed by the Appellate Authority, namely Financial Commissioner. As we have already held above, the pre-constitutional levy of duty, as proposed, is permissible only if the same is duly prescribed. That was prescribed under the Rules only in the year 1999. In the case of the petitioner herein, the re-distillation admittedly is prior to 1999 and, therefore, there can be no levy of duty on the wastage during the re-distillation process. Hence, the writ petitions are allowed and the impugned orders are quashed. We find that the petitioner had deposited the amounts under protest, pursuant to interim order, passed by this court. As we have held that duty, as above, is impermissible under law, the amounts, deposited by the petitioner, shall be refunded forthwith."

50. In view of the aforesaid discussion, we are of the considered view that having regard to Entry No.52 of List I of Seventh Schedule of the Constitution, the malt spirit of overproof strength cannot be the subject matter of any regulation or control of the State as it is not "alcoholic liquor for human consumption". However, 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 the revenue on the sale of such potable alcohol and the public is protected from consuming such illicit liquor.

51. Therefore, the next question which is posed for consideration of this Court is whether the impugned levy of “fees” on “malt spirit of overproof strength” which even though has been held to be within the legislative competence of the State, passes the test of “quid pro quo” as it is for this precise reason that the Hon’ble Supreme Court has remanded the case to this Court. This would be clearly evident from a perusal of paras 40 to 42 of its judgment in ***Mohan Meakin Limited*** *vs.* ***State of Himachal Pradesh and others (2009) 3 SCC 157*** which read thus:-

> *“40. In this case, the State in fact has not produced any material whatsoever before the High Court.*
> *41. In CIT v. Distillers Co. Ltd. (2007) 5 SCC 353, this Court held that even for the purpose of levy of excise duty, the same must have a direct relationship with the manufacture of arrack.*
> *42. We, therefore, are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly and the matter is remitted to the High Court for consideration of the writ petition filed by the appellant afresh. The parties shall be at liberty to file additional affidavits/evidence before the High Court, if they so desire.”*

52. At this stage, it is vehemently argued by the learned Advocate General that the element of compensatory tax based upon the principle of “quid pro quo” is no longer valid in view of the decision of Hon’ble nine Judge Bench of the Hon’ble Supreme Court in ***Jindal Stainless and another*** *vs.* ***State of Haryana and others AIR 2016 SC 5617****.*

53. We are unable to agree with this submission for the simple reason that in ***Jindal Stainless case*** (supra), the Hon’ble Supreme Court was dealing with the question of “compensatory tax” vis-à-vis Article 301 of the Constitution.

54. The concept of compensatory tax is not there in the Constitution, but was judicially evolved in ***Automobile Transport (Rajasthan) Ltd. etc.*** *vs.* ***State of Rajasthan and others AIR 1962 SC 1406*** and has been over-ruled in ***Jindal Stainless's case***. The concept of compensatory tax was judicially crafted as an exception to Article 301 of the Constitution.

55. There is a difference between "tax fee" and "compensatory tax" as has been held by the Hon'ble Supreme Court in ***Mohan Meakin's case*** (supra) in the following manner:-

> *"34. As regards imposition of fee, it was opined :(Vam Organic case[4], SCC p. 241, para 44)*
>
> > *"44. Besides, the fee is required to be justified with reference to the cost of such regulation. The industry is already paying a fee under Rule 2 for such regulation. Indeed, the justification for levying the fee under Rule 3(a) is the identical justification given by the State for levying the fee under Rule 2. Presumably, a full complement of excise officers and staff are appointed by the State in the Excise Department to carry out their duties under the Act to oversee, control and keep duty on the various kinds of intoxicants under the Act. Having regard to the decision in Vam Organics-I[5] we must also assume that apart from the normal strength, additional officers and staff were appointed to regulate the denaturation of the industrial alcohol. There is nothing to show that there has been any deployment of any additional staff to oversee the possibility of renaturation of the denatured spirit."*
>
> *35. The question as regards "aspects of power to levy fee vis-a-vis tax" came up for consideration before this Court in Jindal Stainless Ltd. (2) v. State of Haryana (2006) 7 SCC 241 wherein this Court held: (SCC p. 266, paras 38-39)*
>
> > *"38. In the generic sense, tax, toll, subsidies, etc. are manifestations of the exercise of the taxing power. The primary purpose of a taxing statute is the collection of revenue. On the other hand, regulation extends to administrative acts which produces regulative effects on trade and commerce. The difficulty arises because taxation is also used as a measure of regulation. There is a working test to decide whether the law impugned is the result of the exercise of regulatory power or whether it is the product of the exercise of the taxing power. If the impugned law seeks to control the conditions under which an activity like trade is to take place then such law is regulatory. Payment for regulation is different from payment for revenue. If the impugned taxing or non-taxing law chooses an activity, say, movement of trade and commerce as the criterion of its*

> *operation and if the effect of the operation of such a law is to impede the activity, then the law is a restriction under Article 301. However, if the law enacted is to enforce discipline or conduct under which the trade has to perform or if the payment is for regulation of conditions or incidents of trade or manufacture then the levy is regulatory. This is the way of reconciling the concept of compensatory tax with the scheme of Articles 301, 302 and 304. For example, for installation of pipeline carrying gas from Gujarat to Rajasthan, which passes through M.P., a fee charged to provide security to the pipeline will come in the category of manifestation of regulatory power. However, a tax levied on sale or purchase of gas which flows from that very pipe is a manifestation of exercise of the taxing power. This example indicates the difference between taxing and regulatory powers (see Essays in Taxation by Seligman).*
>
> ***Difference between 'a tax', 'a fee' and 'a Compensatory Tax'***
>
> *Parameters of Compensatory Tax*
>
> *39. As stated above, in order to lay down the parameters of a compensatory tax, we must know the concept of taxing power."*
>
> *It was observed: (Jindal Stainless case [7], SCC p. 268, para 43)*
>
> *"43. In the context of Article 301, therefore, compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the costs of regulation or to meet the outlay incurred for some special advantage to trade, commerce and intercourse. It may incidentally bring in net revenue to the Government but that circumstance is not an essential ingredient of compensatory tax."*

56. Undoubtedly, ***Jindal Stainless Ltd. (2) and another*** *vs.* ***State of Haryana and others (2006) 7 SCC 241*** has been over-ruled by a larger Bench of nine Judge in ***Jindal Stainless and another*** *vs.* ***State of Haryana and others AIR 2016 SC 5617*** (supra) with regard to "compensatory tax", but the distinction between "tax" and "fee" has been maintained and is otherwise legally well accepted. Tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege.

57. The distinction between "tax" and "fee" has been lucidly explained by the Hon'ble Supreme Court in its recent judgment reported in ***State of Tamil Nadu and another*** *vs.* ***TVL. South Indian Sugar Mills***

Association and others (2015) 13 SCC 748, wherein it was held as under:-

> *"7. Over the years, the inflexibility with which the principle of quid pro quo was to be applied, which may have been sired from a pedantic perusal of Synthetics and Chemicals Ltd.[2], has been clarified and crystallized by this Court. We shall reproduce these paragraphs from B.S.E. Brokers' Forum, Bombay and Others v. Securities and Exchange Board of India and others, (2001) 3 SCC 482 to enable their fruitful consideration: (SCC pp.501 & 503-04, paras 30 & 38)*
>
> > *30. This Court in the case of Sreenivasa General Traders v. State of A.P. (1983) 4 SCC 353 has taken the view that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. This Court said that in determining whether a levy is a fee or not emphasis must be on whether its primary and essential purpose is to render specific services to a specified area or class. In that process if it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. It also held that there is no generic difference between a tax and a fee and both are compulsory exactions of money by public authorities. This was on the basis of the fact that the compulsion lies in the fact that the payment is enforceable by law against a person in spite of his unwillingness or want of consent. It also held that a levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It also held that the element of quid pro quo in the strict sense is not always a sine qua non for a fee, and all that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. That judgment also held that the earlier judgment of this Court in Kewal Krishan Puri v. State of Punjab (1980) 1 SCC 416 is only an obiter.*
> >
> > * * *.
> >
> > *38. As noticed in City Corpn. of Calicut vs.Thachambalath Sadasivan (1985) 2 SCC 112 the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in Sirsilk Ltd. vs. Textiles Committee 1989 Supp. (1) SCC 168 if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between*

> *the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgments to the facts of the case in hand, it can be seen that the statute under Section 11 of the Act requires the Board to undertake various activities to regulate the business of the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, wherever necessary. Such activities are clearly regulatory activities and the Board is empowered under Section 11(2)(k) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone."*

58. As regards "fee" in the instant case, the same has to be determined on the basis of "quid pro quo" as the State's power to impose or levy is limited to (i) the regulation of non-potable alcohol for the limited purpose of preventing its use as alcoholic liquor (ii) the charging of fee based on "quid pro quo" (Refer: ***Vam Organic Case*** (supra).

59. Reverting to the facts, it would be noticed that despite the orders passed by the Hon'ble Supreme Court, the State has not produced any tangible material to show that it was incurring any additional costs for the purpose of ensuring that the so called malt spirit of over proof strength is not surreptitiously converted into potable liquor so as to deprive the State of the revenue on the sale of alcohol and, at the same time, the public is protected from consuming such illicit liquor.

60. We are conscious of the fact that the traditional view with regard to concept of fee of "quid pro quo" has undergone a sea change and now it is no longer regarded necessary that (i) some specific service must be rendered to the particular individual or individuals from whom a fee is realized and what has to be seen is whether there is a broad and general co-relation between the totality of fee on the one hand, and the totality of the expenses of services on the other, (ii) there need not be an exact or mathematical correlation between the amount realized as a "fee" and the value of the service rendered. A particular

correlation between the two is sufficient to sustain the levy. (Refer: ***State of Himachal Pradesh and others*** *vs.* ***M/s Shivalik Agro Poly Products and others AIR 2004 SC 4393).***

61. It would be noticed that in compliance to the judgment dated 18.12.2008 passed by the Hon'ble Supreme Court, the respondents did file a supplementary affidavit and the averments as are necessary for the purpose of these petitions are contained in paragraphs 12 and 13 of this affidavit which read thus:-

> *"12. That the State Government is having the following distilleries, breweries and bottling plants manufacturing liquor in the State and selling the same, and the Government has employed full-time staff as shown against each:-*

Sr.No.	***District***	***Manufacturing Unit***	***Staff employed***	
	Solan		***ETI***	***Peon/ Beldar***
1.	*-do-*	*M/s Mohan Meakin Ltd.Solan Brewery*	*3*	*0*
2.	*-do-*	*M/s Kasauli Distillery, Kasauli*	*1*	*1*
3.	*-do-*	*M/s Himalayan Gold Brewery Ltd. Kripalpur, BBN Baddi*	*1*	*0*
4.	*-do-*	*United Spirits Ltd., Baddi*	*1*	*1*
5.	*-do-*	*M/s Patiala Distillers & Manufactures Ltd. Baddi, Distt. Solan*	*2* *0*	
6.	*-do-*	*M/s K.M.Distillery Pvt. Ltd., Parwanoo District Solan*	*1*	*1*
7.	*-do-*	*M/s H.P.GIC Parwanoo District Solan*	*1*	*0*
8.	*-do-*	*M/s Kala Amb Distillery and Brewery V. Bhangla Tehsil Nalagarh, District Solan*	*1*	*0*
9.	*-do-*	*M/s Sabacchus Distillery Pvt. Ltd., Nalagarh, District Solan*	*1*	*0*
	Sirmaur			
10.	*-do-*	*Carlsberg India Pvt. Ltd.,Tokion, Paonta Sahib.*	*2*	*1*
11.	*-do-*	*M/s Tiloksons Brewery & Distillery Kala Amb, District Sirmaur (Beldar)*	*1*	*1(Beldar)*

12.	*-do-*	*M/s Yamuna Beverages Pvt. Ltd. 14 Nariwala, Paonta Sahib, District Sirmaor.*	*2*	*1(Beldar)*
13.	*-do-*	*M/s Hill View Distillery & Bottling Plant, Shambhuwala, District Sirmour*	*1*	*1(Beldar)*
14.	*-do-*	*M/s Himgiri Beverages Meerpur Kotla, Kala-Amb,Distt. Sirmour*	*1*	*0*
	Una			
15.	*-do-*	*M/s H.P.GIC Ltd., Mehatpur, District Una, H.P.*	*2*	*0*
16.	*-do-*	*M/s Rangar Breweries Ltd., Mehatpur District Una, H.P.*	*2*	*2*
	Hamirpur			
17.	*-do-*	*M/s Him Queen Distillers & Bottlers Kunani, Distt. Hamirpur*	*1*	*1*
	Kangra			
18.	*-do-*	*M/s Bindal Associates, Tehsil Indora*	*1*	*1*
19.	*-do-*	*M/s V.R.V. Foods Ltd. Sansarpur Terrace, Distt. Kangra*	*1*	*1*
	Mandi			
20.	*-do-*	*M/s Goverdhan Bottling Plant Pvt. Ltd., Galu, District Mandi*	*1*	*1*
21.	*-do-*	*M/s Basandari Bottlers Pvt. Ltd., Industrial Area, Ner Chowk(Ratti), Distt. Mandi*	*1*	*1*

13. That exclusively on the staff posted within the distillers (which strength is by all standards deficient and highly inadequate), breweries and bottling plants/bonded warehouses , the State Government is incurring annual expenditure of Rs.1,53,45,564. If the expenses of the staff posed in the Districts, Collector (Excise) offices and the Financial Commissioner (Excise) Office are also calculated, these expenses are bound to be around Rs.9/10 crores annually, for multifarious aspects of supervision required under the aforesaid provisions of the Act and the rules framed there under, which is absolutely indispensable for effective excise control and supervision."

62. The petitioner has filed a counter-affidavit wherein it has been specifically averred that the excise staff has been posted by the Government in the petitioner's Units at Kasauli and Solan, but their salaries are being paid by the petitioner and besides the salary, the

petitioner is also providing to the entire staff posted in the Brewery and Distillery at Solan and Kasauli free furnished accommodation with free water, electricity and free telephone in their office. The salaries and other expenses incurred on the staff posted in various distilleries are also paid by the concerned distilleries. It is also pointed out that the services being provided and the expenses being incurred by the State are wholly disproportionate to the fees and taxes which are being collected from the various manufacturing units. Infact, the State is thriving on the levy of excise duties and license fees which is collected from various distilleries, breweries, bottling plants and bounded warehouses in the State. It is specifically stated that even the State is collecting huge amount as fee, but it is rendering little or no services except harassment to the parties. The co-relation between the services rendered and the license fee levied and collected has not been justified by placing any material on record.

Noticeably, the respondents have not cared to rebut these averments.

63. Thus, from a conspectus of the aforesaid discussion, it is clearly evident that the State Government has not undertaken any supervisory activity which will constitute “quid pro quo” for the imposition of the import fee. The respondents have further failed to co-relate the amount of fee levied with the expenses incurred by the Government in rendering the services. There is total absence of any co-relation between the expenses incurred by the respondents and the amount raised by them.

64. In view of the aforesaid discussion, both the petitions are allowed. The notifications issued by the respondents dated 23.03.1996, 31.03.1997 and 30.03.1998 are quashed and set aside and consequently

notices dated 27.01.1999 and 10.02.1999 demanding the payment of permit fee on import/transport of “overproof strength spirit” which form the subject-matter of CWP No.251 of 1999 are quashed and set aside. Similarly, the demand notices which form the subject-matter of CWP No.590 of 1999 are quashed and set aside and respondents are directed to refund the licence fee to the petitioner(s) charged in terms of those notifications. All pending application(s) stand disposed of.

65. Registry is directed to place a copy of this judgment on the file of CWP No.590 of 1999.

(Tarlok Singh Chauhan),
Judge.

31st August, 2017.
(krt)

(Chander Bhusan Barowalia),
Judge.