
(2019) 08 UK CK 0236

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1913, 990 Of 2012

M/s India Glycols Limited

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

United Provinces Excise Act, 1910 — Section 40(1), 40(2)

Calcutta Municipal Act, 1951 — Section 2, 548

Uttar Pradesh Import, Export, Transport And Possession Of Denatured Sprit Rules, 1931 — Rule 9, 10, 11

Citation : (2019) 08 UK CK 0236

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Dinesh Dwivedi, Prateek Dewivedi, Ashutosh Posti, J.P. Joshi, S.R. Joshi, Suyash Pant

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. The petitioner is common in both these writ petitions, who, inter alia, manufactures industrial alcohol or more precisely Extra Neutral Alcohol (ENA), and is aggrieved on the export fee being charged from him, which is a fee for exporting liquor outside the territory of Uttarakhand.

2. The contention of the petitioner is that it is beyond the legislative competence of the State, to either control the manufacture or levy tax on "industrial alcohol", and only the Parliament is competent to do that.

3. The petitioner also relies on a Division Bench judgment of this High Court where, according to the petitioner, a similar challenge by him earlier on imposition of this levy was allowed and the levy was held to be illegal. The reference here is of a decision of Division Bench of this Court dated 09.01.2012 in Writ Petition No. 1202 of 2007 (M/B), M/s India Glycols Limited v. State of

Uttarakhand & another. We will come to these submissions and what has been held by the Division Bench of this Court in a while, but before that a reference of certain provisions of law, and important dates may be in order.

4. In the pre-constitutional era, the erstwhile Province of U.P. had enacted the U.P. Excise Act, 1910. In this Act, powers were given to the Provincial Government to frame Rules under sub-section (1) and (2) of Section 40 of the Act and consequently the erstwhile United Provinces framed its Rules regarding Import, Export, Transport and Possession, inter alia, of Denatured Spirit, in the year 1931 called "the U.P. Import, Export, Transport and Possession of Denatured Sprit Rules, 1931". As per Rules 9 and 10 of the said Rules, a permit has to be taken by a person under Rule 9 for import of denatured spirit and/or special denatured spirit and/or rectified spirit and/or absolute alcohol (not for human consumption) and at the time of granting such permit, the Excise Commissioner had to charge a fee under Rule 10 calculated at the rate of 0.75 (Seventy Five paise) per bulk litre for the quantity of denatured spirit or special denatured spirit, a fee calculated at the rate of 2.50 (Rs. Two and Fifty paise only) per bulk litre for the quantity of absolute alcohol or rectified spirit for industrial use and a fee at the rate of R.5.00 (Rs. Five only) per bulk litre of quantity of rectified spirit for potable use.

5. Rules 9 and 10 of the U.P. Import, Export, Transport and Possession of Denatured Sprit Rules, 1931 read as under:-

"Rule 9- Any person desiring export shall obtain a permit in his name from the Chief Revenue Authority or Officer appointed in that behalf of the district or place of import authorizing the import of denatured spirit and/or special denatured spirit and/or rectified spirit and/or absolute alcohol (not for human consumption) and specifying the quantity to be imported."

Rule 10- Application for pass- (1) Such person who has obtained permit under Rule 9 shall then in case of export from wholesale shop, present an application in duplicate to the Excise Commissioner specifying:

(a) the name of consignee, and

(b) the quantity of denatured spirit, special denatured spirit, rectified spirit or absolute alcohol to be exported.

After obtaining permission from the Excise Commissioner the applicant shall submit an application to the Collector concerned. The application shall be accompanied by the permit obtained under Rule 9, Permission of the Excise Commissioner and a receipt showing that the applicant has deposited into Government treasury; situated in the district of export, a pass fee calculated at the rate of Re.0.75 (Seventy five paise) per bulk litre for the quantity of denatured spirit or special denatured spirit and a pass fee calculated at the rate of Rs.2.50 (Rs. Two and Fifty paise only) per bulk litre for the quantity of absolute alcohol or rectified spirit for industrial use and a pass fee calculated at

the rate of Rs.5.00 (Rs. Five only) per bulk litre of quantity of rectified spirit for potable use for which export fee is required.

(2) The Excise Commissioner in the event of giving permission for the grant of pass under Rule-11 shall forward one copy of the said application to the Collector concerned indicating the wholesale shop and the district of export."

6. These Rules of 1931 were amended in the erstwhile State of Uttar Pradesh on 01.04.1999, known as "Uttar Pradesh Excise Import, Export, Transport and Possession of Denatured Spirit (Twenty-third Amendment) Rules, 1999. For Rule 10 of the Rules of 1931, the following Rule was substituted:-

"10. Application for pass or permit.- (1) Such person who has obtained permit under Rule 9 shall then in case of Export from wholesale shop, present an application in duplicate to the Excise Commissioner specifying:-

(a) the name and address of consignee, and

(b) the quantity of denatured spirit, special denatured spirit, rectified spirit, absolute alcohol or extra neutral alcohol to be exported.

After obtaining permission from the Excise Commissioner the applicant shall submit an application to the Collector concerned. The application shall be accompanied by the permit obtained under Rule 9, permission of the Excise Commissioner and a receipt showing that the applicant has deposited into Government Treasury, situated in the district of Export, a permit fee calculated at the rate of 50 paise (fifty paise only) per bulk litre of the quantity of denatured spirit or special denatured spirit and a permit fee calculated at the rate of Rs.2.25 (Rupees Two and paise Twenty-five only) per bulk litre of the quantity of rectified spirit and a permit fee calculated at the rate of Rs.2.50 (Rupees Two and paise fifty only) per bulk litre of the quantity of absolute alcohol and extra neutral alcohol.

(2) The Excise Commissioner in the event of giving permission for the grant of pass or permit under Rule 11 shall forward one copy of the said application to the Collector concerned indicating the wholesale shop and the district of export."

7. After the creation of the new State of Uttarakhand, which was carved out of the erstwhile State of U.P., the laws applicable in U.P. continued to be followed in Uttarakhand, subject to modification, adaptations, etc., as given in the U.P. Reorganisation Act, 2000.

8. The export fee which was initially valid upto 31.03.2006 was extended till 31.03.2007. It was not extended further. By the earlier notification, the export fee was being charged from the petitioner at the rate of Rs.1/- per bulk litre. Then vide order of the Excise authorities dated 02.09.2007, the export fee of Rs. 2.50/- per bulk litre was being charged. This was being done presumably on a notion that after the expiry of the notification on 31.03.2007, the earlier notification dated 1.04.1999 (where the fee was Rs.2.50/- per bulk litre), would

have automatically revived. The petitioner, all the same, challenged this demand by way of a writ petition before this Court.

9. The case of the petitioner was that they have been exporting Extra Neutral Alcohol (ENA) since 2006-07 and when their representations to the State Government for reduction of this levy (from Rs.2.50/- to Rs. 1/-) failed to yield any result, they were constrained to file a writ petition before this Court. Their petition was initially dismissed by the Division Bench of this Court, apparently on a misconception that the levy was on "potable alcohol" (on which the State Government was competent to legislate). Later the matter went to the Hon'ble Apex Court, where the petitioner was given a liberty to file a review application. The matter was again taken up in the review, where the decision was given by a Division Bench of this Court holding the levy to be without any authority of law, and though the levy could be permissible as a "fee", if it was for the purposes of regulating and controlling the manufacture and transport of industrial alcohol, yet it could not be excessive.

10. The petitioner relied upon the judgments of Hon'ble Apex Court i.e. Synthetics and Chemicals Ltd. and others v. State of U.P. and others reported in 1990 (1) SCC 109 and State of U.P. and others v. VAM Organic Chemicals Ltd. and others reported in (2004) 1 SCC 225. The two fold contention of the petitioner was that firstly what was being charged from them in the form of export fee is actually a tax on which the State does not have the legislative competence, as the State only has powers to legislate and/or to impose tax on potable alcohol. In any case, even if it is a fee it is highly excessive and does not commensurate with the service rendered and definitely there is no quid pro quo which would justify such an exorbitant fee.

11. As far as legislative competent was concerned, the Court came to the conclusion that what was being charged from the petitioner was on the basis of a notification which was in existence only till 31.03.2007 and since there was no notification in existence thereafter, the fee could not be charged. As to the fee being excessive, the Court observed that there is actually no quid pro quo. Paragraph 12 of the judgment reads as under:-

"12. It is the contention of the writ petitioner that there is no quid pro quo in relation to imposition of export fee on rectified spirit, extra neutral alcohol and Indian made foreign liquor and, in any event, there is no co-relation between the levy imposed and the counter payment or quid pro quo. It is the case of the respondents that the Notification brought in regulatory measure and the fee was levied to compensate cost of supervision. Insofar as the regulatory measure is concerned, as will be evidenced from the orders referred to above, that the same directed, amongst others, that consignment/contained should be sealed carefully by the Excise Officer in charge of the distillery and the same shall be checked and verified by the Officer-in-Charge of Excise posted at the ICD Depot, Tughlakabad, New Delhi, or by the Officer-in-Charge of Excise ICD Depot, Dadri, Uttar Pradesh. In other words, the orders made it clear that only an additional

supervision by the Excise Officer, in charge of the distillery is required to be made to ensure that each consignment/ container is sealed....."

12. Later in the same paragraph, the Division Bench of this Court said as under:-

"But, at the same time, for the reason that the State of Uttarakhand has failed to establish counter payment or quid pro quo in relation to the regulation for export of extra neutral alcohol and rectified spirit; we have no other option but to hold that the said imposition is unsustainable."

13. It was finally held as follows:-

"15. With the declaration as above, we hold that any demand, made in respect of fee for export of rectified spirit and extra neutral alcohol, upon the petitioner for export of rectified spirit and extra neutral alcohol subsequent to 31st March, 2006 to be read as 2007 i.e. on and from 1st April, 2006 to be read as 2007, is invalid, unsustainable and irrecoverable. This declaration, however, will not stand in the way of the State of Uttarakhand claiming such fee, in the event, petitioner has passed on such fee to its buyers, although it has not paid the same to the State of Uttarakhand and, for that matter, State of Uttarakhand shall be entitled to take such steps as it may be entitled to take in accordance with law."

14. The Division Bench did not grant the relief to the petitioner for its refund. A review petition was filed by the petitioner for that relief again, which was dismissed as follows:-

"The judgment under review, concluded thus:

"With the declaration as above, we hold that any demand, made in respect of fee for export of rectified spirit and extra neutral alcohol, upon the petitioner for export of rectified spirit and extra neutral alcohol subsequent to 31st March, 2006, i.e. on and from 1st April, 2006, is invalid, unsustainable and irrecoverable. This declaration, however, will not stand in the way of the State of Uttarakhand claiming such fee, in the event, petitioner has passed on such fee to its buyers, although it has not paid the same to the State of Uttarakhand and, for that matter, State of Uttarakhand shall be entitled to take such steps as it may be entitled to take in accordance with law."

In the present review application the basic contention of the review applicant is that the second sentence of paragraph 15 is not legally sustainable. That is no ground for review. If that is not legally sustainable, the only remedy available to the review applicant is to prefer an appeal against that portion of the judgment.

Since review application has been filed, let us make it absolutely clear that in the body of the writ petition, which was dealt with by the judgment and order under review, there was not a single whisper that the customers of the writ petitioner were not charged the subject fee. In that background, we were constrained to put that part in our judgment, inasmuch as, if the writ petitioner had collected such fee from its customers, it had represented to its customers that the same is

payable because of a levy in that regard has been legally fastened on it, and accordingly, that collection must be deemed in law on behalf of the State. With the observation as above, we dismiss the review application."

15. Subsequent to the said judgment, another notification was issued by the Government of Uttarakhand on 04.05.2012 bringing an amendment which was called "the U.P. Import, Export, Transport and Possession of Denatured Spirit (Fourth Amendment) Rules, 1931. This was made effective retrospectively from 01.04.2007 and by this notification the export free at the rate of Rs. 2.50/- (Rupees Two and fifty Paise) per bulk litre of ENA was imposed. This notification dated 04.05.2012 has been challenged by the petitioner in Writ Petition (M/S) No. 990 of 2012, where an interim order has been granted by this Court and the respondents have been restrained from realizing export fee beyond the territory of India.

16. The above notification was quickly followed by another amendment dated 08.06.2012 called "The Uttarakhand Excise (Amendment) Act, 2012 (Uttarakhand Act No. 03 of 2012). Vide this amendment was added a proviso after sub-section (1) to Section 40 of the United Provinces Excise Act, 1910 (Act No. 04 of 1910) by adding as such:

"Provided further that the rule tenure Uttar Pradesh Excise Export, Import and Kept in possession of Rectified Spirit (23rd Amendment) Rules, 1999 published with notification No. 129/13-2004 dated 13 March, 1931 be deemed to and always to have been in force from 01 April, 2007 to the context of the State of Uttarakhand."

17. The petitioner has challenged both the two amendments i.e. amendment to the Rule as well as the amendment to the Act.

18. The amendment in the Act as well as the Rules are obviously an effort to overcome the legal impediment the Government faced on the earlier occasion, before the Division Bench of this court. This effort on the part of the State to amend both the Act and the Rules may appear as an "over kill", but there has been no serious challenge to this, nor any illegality demonstrated before this Court.

19. The argument of the learned Senior Counsel for the petitioner still remains as it was earlier, which is that what is being manufactured by them is a form of industrial alcohol, more precisely Extra Neutral Alcohol (ENA) and it is outside the legislative competence of the State to either control the manufacture of industrial alcohol or to levy any tax on it. Learned Senior Counsel concedes that in view of the two seminal judgments of the Hon'ble Apex Court i.e. Synthetics and Chemicals Ltd. and others v. State of U.P. and others reported 1990 (1) SCC 109 and State of U.P. and others v. VAM Organic Chemicals Ltd. and others reported in (2004) 1 SCC 225, a fee can be imposed in order to regulate the flow of industrial alcohol, but this cannot be excessive. It must commensurate with the expenses incurred by the State Government in this activity, otherwise the fee

itself would become tax, which the State Government is not competent to impose.

20. The powers of the State Government to impose an excise duty on alcoholic liquor, which is for human consumption is given in Item No. 51 of List II of Seventh Schedule, which reads as under:

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

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

But not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

21. This has to be read with Item No. 6 & 8 of List II of the same Schedule, which read as under:-

"6. Public health and sanitation; hospitals and dispensaries."

"8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors."

22. On the other hand, Item No. 52 of List I of Seventh Schedule reads as under:-

"52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest".

23. Immediately after the enforcement of the Constitution of India, the Parliament enacted "Industries (Development and Regulation) Act, 1951 (from hereinafter referred to as the Act of 1951). The Statement of Objects and Reasons to the Act of 1951 reads as under :-

"The Bill brings under Central control the development and regulation of a number of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import."

24. By virtue of the Act of 1951, the control of the scheduled industries vests with the Central Government. Section 2 of the Act of 1951 reads as under:

"2. Declaration as to expediency of control by the Union. - It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

25. Item No. 26 of the First Schedule of the Act of 1951, as it was prevailing at the relevant time i.e. in the year 2012 reads as under:-

"26. FERMENTATION INDUSTRIES

(1) Alcohol

(2) Other products of fermentation industries."

26. In *Synthetics and Chemicals Ltd.* (supra), the question before the Hon'ble Apex Court was whether the imposition of vend fee in respect of industrial alcohol, as was being imposed by different States, was valid. The questions imposed before the Hon'ble Apex were as follows:-

"(i) whether the power to levy excise duty in case of industrial alcohol was with the State legislature or the Central legislature?

(ii) what is the scope and ambit of Entry 8 of List II of the Seventh Schedule of the Constitution?

(iii) whether, the State Government has exclusive right or privilege of manufacturing, selling, distributing, etc. of alcohols including industrial alcohol. In this connection, the extent, scope and ambit of such right or privilege has also to be examined?"

27. The Hon'ble Apex Court came to the conclusion as under:

"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 6 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 fee based on quid pro quo. See in this connection, the observations of *Indian Mica case* (1971) 2 SCC 236)."

28. In para 88 of *Synthetics and Chemicals Ltd.*, the Court went on to elaborate as under:-

"88. On the 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 imposition 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."

29. Thus the State though has no power to impose tax on industrial alcohol, it has power to regulate the same, as held above. This is further clarified by a similar observation made by the Court in the earlier paragraph of the judgment i.e. in para 63 which reads as under:

"63. We are of the opinion that we need not detain ourselves on the question whether the States have police power or not. We must accept the position that the States have the power to regulate the use of alcohol and that power must include power to make provisions to prevent and/or check industrial alcohol being used as intoxicating or drinkable alcohol. The question is whether in the garb of regulations a legislation which is in pith and substance, as we look upon the instant legislation, fee or levy which has no connection with the cost or expenses administering the regulation, can be imposed purely as regulatory measure. Judged by the pith and substance of the impugned legislation, we are definitely of the opinion that these levies cannot be treated as part of regulatory measures. In this view of the matter we do not detain ourselves with examining the numerous American decisions to which our attention was drawn by learned counsel very elaborately and thoroughly."

30. The decision in the case of Synthetics and Chemicals Ltd. was followed by the Hon'ble Apex Court in VAM Organic Chemicals Ltd. and others, (2004) 1 SCC 225.

31. In VAM Organic Chemicals Ltd., the Hon'ble Apex Court was dealing with cases where the State Government had imposed a licence fee of fifteen paise per litre on "specially denatured spirit (SDS). Relying upon the Synthetics and Chemicals Ltd., the Apex Court in VAM Organic Chemicals Ltd. held that the said power is limited to only regulation of non-potable alcohol "for the limited purpose of preventing its use as alcoholic liquor and to charge fee based on quid pro quo". It then went on to make a distinction between fee and tax and referred to the judgment of Hon'ble Apex Court in the case of Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 C 282, which had said as under:-

"[A] fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay....These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be application to all cases."

32. It then went on to describe further in para 34 as follows:

"34. The word "service" in the context of a fee could, therefore, include, a levy for a compulsory measure undertaken vis-à-vis the payer in the interest of the public. This "coercive" measure has been subsequently judicially clarified to mean a "regulatory measure". But in the case of both kinds of services, whether compulsorily imposed or voluntarily accepted, there would have to be a correlation between the levy imposed and the "counterpayment or quid pro quo". However, correlation between the levy and the services rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable "relationship" between levy of the fee and the service rendered. Contrariwise when there is no such correlation, the levy, despite its nomenclature is in fact a tax. In *Corpn. of Calcutta v. Liberty Cinema* AIR 1965 SC 1107, the licence fee charged under Section 548 of the Calcutta Municipal Act, 1951 had been challenged on the ground that no service was rendered commensurate with the tax."

33. Undoubtedly the State Government cannot levy tax on "industrial alcohol". This much is clear. But in view of Item No. 6 & 8 of List II of Seventh Schedule read with Item No. 33 of List III of Seventh Schedule, it is necessary for the State and in fact it is the duty of the State to ensure that non-potable alcohol does not trickle down and falls in the hands of general public and becomes a public health issue, for which it has a duty to regulate industrial alcohol. Moreover, industrial alcohol has various variants, and some of them at least (such as ENA), can easily be converted to potable alcohol, hence the Government is fully authorised to regulate and check its misuse. When industrial alcohol is converted to potable alcohol then the State Government is also deprived of its legitimate tax on potable alcohol, since it is not accounted, and is illegal.

34. The State Government can therefore charge a fee on industrial alcohol on quid pro quo basis as well as for regulation purposes i.e. where it incurs expenses in regulation of industrial alcohol, to prevent its misuse.

35. In *VAM Organic Chemicals Ltd.*, the manufacturers of industrial alcohol were at pains to show to the Hon'ble Apex Court that it is extremely difficult for industrial alcohol, particularly the "denatured spirit", to be converted into potable alcohol. Their case was that once the spirit was denatured, it is not possible to re-nature it.

36. On the other hand, what we are dealing here is not "denatured spirit", but what we are dealing here is Extra Neutral Alcohol (ENA). Extra Neutral Alcohol though may be placed in the general category of "industrial alcohol", yet it is quite different from "denatured spirit". ENA is a high purity ethyl alcohol, which is produced from sugarcane molasses in the present case. It is used in pharmaceutical, perfumery and cosmetic industries as well as in making of alcoholic beverages such as Vodka. In the website of none other than the present petitioner i.e. India Glycols (URL "indiaglycols.com"), the product i.e. Extra Neutral Alcohol is advertised as follows:

"Extra neutral alcohol/rectified spirit India Glycols' Uttarakhand unit is considered one of the most efficient distilleries in India, producing the finest quality extra neutral alcohol (ENA), with a capacity of 20 million litres per annum.

IGL's ENA conforms to international standards and is exported in food grade HDPE drums and ISO tanks to Middle East, Africa and Srilanka, apart from being supplied to many of India's premium liquor brands.

The ENA plant is based on the principles of multi pressure-cascading techniques and the process control is done by Digital Distributed Control System.

In addition to its use in the production of potable alcohol, ENA is used as a reaction aid in the pharmaceutical industry and as a volatile carrier of flavour and fragrances.

The three state-of-the art distilleries situated at Kashipur, Uttarakhand; Gorakhpur, Uttar Pradesh; and Todarpur (Saharanpur), Uttar Pradesh are engaged in producing ENA of the highest international quality - minimum 96.4 v/v ENA.

Capacities:

Location	Total licensed capacity (per annum)	potable capacity (per annum)
Kashipur	803 lac BL	180 lac BL
Gorakhpur	1,000 lac BL	528 lac BL
Saharanpur	1,000 lac BL	96 lac BL

With these capacities, we are the largest manufacturer of alcohol in the country. The company adopts stringent quality specifications and has a most modern technical centre, an expert sensory panel and a qualified and skilled technical team.

IGL has been awarded the Best Quality ENA Award for the year 2008 by Alcobev."

37. The ENA which is presently being exported out from the industry of the petitioner may not be for the use of human consumption, in the form of potable alcohol, but it has definitely the potential to be converted to potable alcohol and therefore the State is not only justified, but it has a duty to regulate the manufacturing, trade and transport of the same. It is but natural that it would incur expenses in regulating this activity.

38. According to the petitioner, the expenses of Rs. 2.50 per bulk litre is not justified. The contention of the petitioner that the fee being charged does not match the expenses incurred is denied by the State in its counter affidavit, where it says that an Excise Inspector is posted in the petitioner's unit at Kashipur and a person is sent with the tanker while the alcohol is being exported. Apart from

this, there are arrangements made to randomly check the tanker which carries ENA, so that it is ensured that ENA is not converted to potable alcohol unauthorizedly. The papers are also processed in different offices of the Excise Department, for issuing export pass order. A part of the expenditure incurred on the officials working on those offices is directly related to the consignment. The State has then given a figure of 2013 and has admitted that if the fee taken was Rs. 7,40,00,000/- whereas expenses incurred was Rs. 1,26,000/- per month.

39. Although this is a figure of 2013 and it is possible that now the expenses may be more, but the fact remains that although the State can regulate the flow of ENA and check its misuse by deploying force and ensure that ENA is not converted to potable liquor, it must justify the expenses incurred. All the same, presently the State has not been able to justify the fee being charged. The State Government can take the fee from the petitioner, but this has to match the expenses it incurs, not mathematically, but reasonably and broadly.

40. How much these expenses are going to be is for the State Government to answer. The present fee of Rs. 2.50 (Rupees Two and Fifty Paise) per bulk litre is not justified and the same is liable to be set aside. This, however, would not mean that the State cannot take this fee. The State must therefore reconsider the quantum of fee after taking inputs from relevant authorities and person concerned and arrive at a reasonable figure. For that the State is given eight weeks time to do the needful.

41. As far as petitioner's prayer that the State Government may be directed to refund the fee what has already been paid by the petitioner, I am not inclined to grant this relief. This is so as the amount sought to be refunded may have been recovered from the consumers. It would therefore be a case of unjust enrichment. Moreover, this plea was also turned down by the Hon'ble Apex Court in *Synthetics and Chemicals Ltd.* as well in para 89, which reads as under:-

"89. We must, however, observe, that these imposts and levies have been imposed by virtue of the decision of this Court in *Synthetics & Chemicals Ltd.* case (1980) 2 SCC 441. The States as well as the petitioners and manufacturers have adjusted their rights and their position on that basis except in the case of State of Tamil Nadu. In that view of the matter, it would be necessary to state that these provisions are declared to be illegal prospectively. In other words, the respondents States are restrained from enforcing the said levy any further but the respondents will not be liable for any refund and the tax already collected and paid will not be refunded. We prospectively declare these imposts to be illegal and invalid, but do not affect any realisations already made. The writ petitions and the appeals are disposed of accordingly. The review petitions, accordingly, succeed though strictly no grounds as such have been made out but in the view we have taken, the decision in the *Synthetics & Chemicals Ltd.* case (1980) 2 SCC 441 cannot be upheld. In the view we have taken also, it is not necessary to decide or to adjudicate if the levy is valid as to who would be liable, that is to say, the manufacturer or the producer or the dealer."

42. This request of the petitioner was even earlier denied by the Division Bench of this Court, a reference of which has been made in the preceding paragraphs of this order.

43. In view of the observations made above, the writ petitions are disposed of. Interim orders dated 12.09.2012 passed in Writ Petition (M/S) No. 1913 of 2012 and 24.05.2012 passed in Writ Petition (M/S) No.990 of 2012 are hereby vacated.