IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 27TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MRS JUSTICE M.G.UMA

WRIT PETITION NO.109609 OF 2014 (EXCISE)

C/W

WRIT PETITION NO.81694 OF 2013

IN WP NO.109609/2014

BETWEEN:

M/S. HIRNAYAKESHISAHAKARI SAKKARE
KARKHANE NIYAMITHA, SENKESHWAR
DISTRICT BELGAUM.
REP. BY ITS MANAGING DIRECTOR

...PETITIONER

(BY SRI. PRAVEEN P. TARIKAR, ADVOCATE FOR
SRI. PRASHANT F. GOUDAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY ITS ADDITIONAL CHIEF
SECRETARY TO GOVERNMENT,
DEPARTMENT OF FINANCE,
VIDHANA SOUDHA,
BANGALORE-560 001.

2. THE EXCISE COMMISSIONER IN
KARNATAKA VOKKALIGARA SANGHA,
DIAMOND JUBILEE BUILDING,
KITTUR RANI CHENNAMMA CIRCLE,
BANGALORE-560 001.

3. THE DEPUTY COMMISSIONER,
OF EXCISE BELGAUM DISTRICT,
BELGAUM.

4. THE SUPERINTENDENT OF EXCISE,
ATTACHED TO H.S.S.K.N DISTILLERY,
SANKESHWAR, BELGAUM.

...RESPONDENTS

(BY SRI. M. KESHWAREDDY, AAG AND SRI. P.N. HATTI, HCGP)

Digitally signed by V N BADIGER
Location: HIGH COURT OF KARNATAKA, DHARWAD BENCH, DHARWAD

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO:

A) ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING THE GOVERNMENT ORDER NO.FD/6/EDC/91 (PART) DATED 18.09.2000 VIDE ANNEXURE-C.

B) ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING THE ORDER BEARING NO.FD/07/DEC/2011 BANGALORE DATED 15.03.2013 VIDE ANNEXURE-L ISSUED BY THE 1ST RESPONDENT.

C) ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING THE ORDER BEARING NO.ECD/67/REV/2013-14 BANGALORE DATED 10.03.2014 VIDE ANNEXURE-M ISSUED BY THE 2ND RESPONDENT.

IN WRIT PETITION NO.81694 OF 2013

BETWEEN:

M/S. UGAR SUGAR WORKS LTD.,
UGAR KHURD, ATHANI TALUK
BELGUM DISTRICT
REPRESENTED BY ITS MANAGER
BANGALORE OFFICE
SHRI N.S.NAYAK.

…PETITIONER

(BY SRI. H.N.SHASHIDHARA, SENIOR COUNSEL FOR
SRI. D.M.MALLI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY,
FINANCE DEPARTMENT,

VIDHANA SOUDHA,
DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560001.

2. THE EXCISE COMMISSIONER IN KARNATAKA
VOKKALIGARA SANGHA DIAMOND
JUBILEE BUILDING,
KITTUR RANI CHENNAMMA CIRCLE,
BANGALORE-560001.

3. THE DEPUTY COMMISSIONER OF EXCISE
BELGAUM DISTRICT
BELGAUM.

4. THE SUPERINTEND OF EXCISE
ATTACHED TO M/S UGAR DISTILLERY
UGARKHURD, ATHANI TALUK,
BELGAUM DISTRICT.

…RESPONDENTS

(BY SRI. M. KESHWAREDDY, AAG AND
SRI. P.N.HATTI, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO:

A) ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING THE GOVERNMENT ORDER NO.FD/6/EDC/91 (PART) DATED 18.09.2000 VIDE ANNEXURE-D.

B) ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING THE ORDER BEARING NO.FD/07/DEC/2011 BANGALORE DATED 15.03.2013 VIDE ANNEXURE-H ISSUED BY THE FIRST RESPONDENT.

THESE WRIT PETITIONS COMING ON FOR FURTHER HEARING, THIS DAY THE COURT MADE THE FOLLOWING:

CORAM: THE HON'BLE MRS JUSTICE M.G.UMA

ORAL ORDER

1. The petitioners in these petitions being the owners of the distilleries, are seeking issuance of writ in the nature of Certiorari to quash the Government Order dated 18.09.2000, produced as per Annexure-D in W.P.No.81694/2013 and Annexure-C in W.P.No.109609/2014; and the order dated 15.03.2013, issued by respondent No.1, produced as per Annexure-H in W.P.No.81694/2013 and Annexure-L in W.P.No.109609/2014. The petitioner in W.P.No.109609/2014, is also seeking to quash the order dated 10.03.2014, passed by respondent No.2, produced as per Annexure-M.

2. Heard Sri.H. N. Shashidhar, learned Senior Counsel for Sri. D. M. Malli, learned counsel for the petitioners, in W.P.No.81694/2013, Sri. Prashant F. Goudar, learned counsel for the petitioners in W.P.No.109609/2014, and Sri. M. Keshav Reddy,

learned AAG for the respondents, in both the petitions. Perused the materials on record.

3. Learned Senior Counsel for the petitioners in W.P.No.81694/2013, contended that;

3.1. The petitioners are running the Distillery Units at Ugar Khurd, Belagavi District, indulged in manufacture of rectified spirit, which is the principal raw material used in manufacturing of arrack, Indian made foreign Liquors, etc.

3.2. Respondent No.1, used to fix the price for supply of rectified spirit manufactured by the petitioner companies as well as other distilleries in the State of Karnataka, to be supplied to bottling units or arrack contractors. The said price was fixed on an ad hoc basis by respondent No.2.

3.3. Since the price so fixed by the State for the year 1989-90 and 1990-91 was inadequate, having regard to the cost of production of

rectified spirit, the Karnataka Distilleries' Association, of which the petitioner companies are members, made several representations to the Government, to revise the price.

3.4. Considering the said representations filed by the Association, and also by M/s. Mandya Sugar Factory – a Government of Karnataka undertaking, the State Government appointed M/s. G. S. Rao and Co., Chartered Accountants, Bengaluru, to go into the question as to whether the rates are to be revised as requested or not, taking into consideration the cost of production of rectified spirit for the period from 01.03.1989 to 12.05.1992 and to submit the report, for the purpose of fixing the reasonable price payable to the Distilleries in respect of rectified spirit already supplied by the Distillery units.

3.5. The Chartered Accountant selected three distilleries, and estimated the cost of production of rectified spirit. He submitted a report to the respondent No.2, recommending for revision of the price.

3.6. After going through the report, respondent No.2 also made recommendation to the Government to fix the price of rectified spirit supplied by the distilleries, as per the recommendation made by the Chartered Accountant. After being satisfied with the said recommendations, respondent No.1 issued the order dated 12.05.1992, fixing the rate of non-captive distillery at Re.0.40 per liter of rectified spirit, from 01.03.1989 to 30.06.1989. Similarly, it has fixed the rate at Re.1.00 per liter of rectified spirit from 01.07.1990 to 30.06.1991. The State Government has enhanced the rate on ad hoc basis, at the rate

of Re.1/- per liter in respect of captive distillery and Rs.2/- per liter in respect of non-captive distillery, for the period from 01.07.1991 to 30.06.1992. The benefit of such order was given to the distillery units, including the petitioners herein.

3.7. The petitioner in W.P.No.81694/2013 has paid a sum of Rs.36,45,211/- towards the enhanced price of the rectified spirit supplied to it by way of difference in price for the period from 01.03.1989 to 30.06.1992.

3.8. It is contended that, the notice dated 26.08.1994 was issued by respondent No.1 calling upon the petitioner to show cause as to why the said amount, which was paid to the petitioner, shall not be recovered. The only ground urged by the Government is that, it has suffered huge loss in view of the fact that it was not in a position to recover the said amount

paid to the petitioner from the consumers, or by the contractors.

3.9. The petitioner has issued a reply on 26.09.1992 explaining in detail, and contending that the Government is not justified in making such demand. The State Government, without considering the objections raised by the petitioner, issued the order dated 18.09.2000 withdrawing the fixation of the revised rate of rectified spirit which was made retrospectively from 01.03.1989 till 11.05.1992 and ordered that such benefit will only be applicable prospectively from 12.05.1992. Consequently, respondent No.2 issued the demand notice dated 15.03.2001 making a demand for Rs.32,47,310/-, to be refunded by the petitioner.

3.10. It is contended that the petitioner had approached this Court by filing

W.P.No.24992/2001 challenging the demand made by the Government, and the said writ petition came to be disposed off permitting the demand order dated 03.02.2011, to be treated as a show-cause notice, and the petitioner was asked to submit its objection to the Government. Upon which, the Government was directed to reconsider the demand made therein by its order.

3.11. Accordingly, the petitioner had submitted a representation to the Government on 28.02.2011, explaining as to how the Government was not justified in demanding the amount which is already paid. It is also brought to the notice to the Government that there is inordinate delay in making such arbitrary demand.

3.12. It is contended that, without taking into consideration the representation submitted by

the petitioner, the Government refused to entertain the appeal. It held that the order of the Government to revise the price is applicable prospectively and not retrospectively. Accordingly, the order dated 15.03.2013 was passed which is produced as per Annexure – H.

3.13. Therefore, it is the contention of the learned Senior Advocate for the petitioner that, respondent No.1 had taken a conscious decision to revise the price of the rectified spirit supplied by the petitioners, which was manufactured with great difficulty by engaging the laborers, and investing huge amounts by borrowing the loan. The revision of the price was given effect to considering the actual cost of production. Therefore, there is no justification to seek refund of the amount already paid. The State Government is not owning any manufacturing unit, nor it has indulged in any other activity,

except permitting auctioning of the rectified spirit manufactured by the units to the arrack contractors and earning huge commission.

3.14. Under such circumstances, the contention taken by the respondents that the Government suffered loss cannot be accepted. Moreover, the decision to revise the price of the non-captive rectified spirit was not taken at once. It was based on the representations submitted by the petitioners and others, and mainly on the basis of the recommendation submitted by the Chartered Accountant, who was appointed for the purpose by the Government and also on the recommendation made by respondent No.2. Under such circumstances, the respondents are estopped from claiming back the benefit which is already given.

3.15. Learned Senior Advocate contended that, the benefit was given to the petitioner in the year

1992, but the show-cause notice was issued in the year 1994. However, the order to seek refund of the amount was passed in the year 2010, which shows the conduct of the Government. It is nothing but a political vendetta, upon which the petitioner is called upon to pay back the amount which is legally paid to them. Hence prays for allowing the petition.

4. Learned counsel for the petitioner in W.P.No.109609/2014 submitted that;

4.1. A similar demand was made by the respondents to the petitioner in this case to pay back the amount of Rs.97,89,701/-. The said demand by the respondent is illegal, and not justified.

4.2. Learned counsel for the petitioner places reliance on the decision of this Court in **Gowri Industries Vs. State of Karnataka**[1], to

[1] ILR 1993 KAR 3153

contend that, the Co-ordinate Bench of this Court had stuck down Rule 17 of the Karnataka Excise (Manufacturers of Arrack) Rules, 1987, insofar as it empowers the State Government to fix the price of rectified spirit, as unconstitutional, and consequently to that extent it is unenforceable.

4.3. It is the contention of the learned counsel for the petitioners that as per the above said decision, the cost of rectified spirit during 1992-93 was Rs.8.50 per liter. But, by passing the impugned order, the Government is seeking to withdraw the benefit given to the petitioners by fixing a meager revised rate at Rs.4/- per bulk liter for captive distillery and Rs.5/- per bulk liter for non-captive distillery. Therefore, fixation of such revised price cannot be termed as unreasonable. But it was, in fact, on a lower side. In spite of that, belatedly, i.e., after lapse

of several years, the State Government has passed the order and issued the demand notice to repay the said amount, which is arbitrary and unjust.

4.4. Learned counsel submitted that the respondent is prevented from demanding the said amount on the principle of promissory estoppel. When the benefit is already extended, the same cannot be withdrawn unilaterally, without any justification. Therefore, he prays for allowing the petition in the interest of justice.

5. Per contra, learned Addl. Advocate General, opposing the petitions submitted that;

5.1. The writ petition itself is not maintainable. No constitutional or statutory rights of the petitioners are invaded. Under such circumstances, the petitioners could not have invoked the power of this Court under Articles 226 of the Constitution of India. Therefore, he

prays for dismissal of the writ petitions in limine.

5.2. Learned Addl. Advocate General also contended that, Annexure-A is the order passed by the State Government extending the benefit by increasing the price for non-captive distilleries. Initially, on the representation submitted to revise the price made by the owners of the distilleries, the Chartered Accountant by name M/s.G. S.Rao and Co., was appointed by the Government. The Chartered Accountant considered the request made and submitted the report to the Exercise Commissioner, recommending for the revision of the rates. The Excise Commissioner considered the report in the light of the representation and recommended to the Government to consider enhancement of the existing price of rectified spirit. However, neither the Chartered

Accountant nor the Excise Commissioner have recommended for giving the benefit of revision of price retrospectively.

5.3. The State Government, while accepting the report of the Chartered Accountant and the recommendation by the Excise Commissioner, proceeded to give the benefit retrospectively i.e., Re.0.40 per liter of non-captive distilleries from 01.03.1989 till 30.06.1990 and Re.1/- per liter of rectified spirit from 01.07.1990 till 30.06.1991. The Chartered Accountant had recommended increase in the price of the rectified spirit, taking into consideration the actual cost of production of the rectified spirit, for the period from 01.04.1991 to 31.12.1991. The revision of the price was only prospective in nature. However, since the benefit was given retrospectively, it has resulted in causing loss to the Government, as it could not recover the

deficit amount, either from the arrack contractor or from the consumers. The State Government has suffered loss of about 8 crores by paying the revised rate with effect from 01.03.1989. Therefore, a decision was taken by the State Government to withdraw the benefit extended to the manufacturers retrospectively. However, the Government continued to give the said benefit to the manufacturers from 12.05.1992, i.e., prospectively.

5.4. Under these circumstances, the petitioners have not suffered any loss and they cannot claim the benefit unnecessarily extended, as no right is vested in them. Hence, the petitioners cannot maintain the petition.

5.5. It is also contended that, it is only by mistake that Annexure-A came to be passed by enhancing the price retrospectively, which was never demanded by the petitioners, nor

recommended by the Chartered Accountant. When it is found that it is a *prima facie* mistake committed by the Government, such mistake is liable to be rectified. Simply because the benefit was given retrospectively, no right is created in favour of the petitioners. Hence, the petitions are liable to be dismissed.

5.6. Learned AAG, placed reliance on the decision of the Hon'ble Apex Court in the case of ***Ekta Shakti Foundation Vs. Government of NCT of Delhi***[2] , in support of his contention, that it is a policy decision taken by the Government to enhance the rate of the rectified spirit. It was also the policy decision taken by the Government to give such benefit retrospectively. Since it was realized that, extending the said benefit has effected the financial health of the Government, the same

[2] (2006) 10 SCC 337

was ordered to be recalled, which is also a policy decision. In the matter of policy decisions, no judicial review will lie with this Court; unless there is breach of fundamental rights of the petitioner, they cannot maintain the petition.

5.7. Learned AAG also places reliance on the decision of the Hon'ble Apex Court in ***Ramniklal N. Bhutta and Another Vs. State of Maharashtra and Others***[3], in support of his contention that the Court should always keep the larger public interest in mind while exercising its power under Article 226 of the Constitution of India, which is a discretionary power. When such benefit extended was withdrawn by assigning valid reasons as provided under Annexure-D, it cannot be questioned by the petitioners.

[3] (1997) 1 SCC 134

5.8. He also places reliance on the decision of the Hon'ble Apex Court in ***Union of India and Another Vs. International Trading Co., and another***[4] in support of his contention that, neither the doctrine of legitimate expectation nor the principle of promissory estoppel are attracted to the facts and circumstances of the case. The decision makers have the choice in planning of the pros and cons relevant to the change in the policy and the same cannot be questioned by the petitioners. Therefore, the petitions are devoid of merits.

5.9. Placing reliance on these decisions and also contending the order impugned assigns valid reasons for withdrawing the benefit, the learned AAG contended that, no grounds are made out to entertain the petitions.

[4] (2003) 5 SCC 437

Accordingly, he prays for dismissal of the petitions.

6. The petitioners in these writ petitions were called upon to refund an amount of Rs.32,47,310/- in W.P.No.81694/2013 and Rs.97,87,701/- from the petitioner in W.P.No.109609/2014. In the light of these facts and circumstances, the contention taken by the respondents is to be taken into consideration.

7. Annexure-A in W.P.No.81694/2013, is the proceedings of the Government of Karnataka, and the order dated 12.05.1992 revising and enhancing the existing price of the rectified spirit to non-captive distilleries from 01.03.1989 to 30.06.1990 at Rs.0.40 per liter of rectified spirit and from 01.07.1990 to 30.06.1991 at the rate of Rs.1.00 per liter of rectified spirit and thus, enhancing on ad-hoc basis the rate of rectified spirit supplied to the distillery bottling units at the rate of Rs.1.00 per liter in respect of captive distilleries, and Rs.2.00 per liter in respect of non

captive distilleries, from 01.07.1991 to 30.06.1992. The proceedings discloses that, the Chartered Accountant appointed to consider the representations submitted by the distillery units for revision of price, submitted his report recommending for revision of the price to the Excise Commissioner. While suggesting revision of the price of rectified spirit, the Chartered Accountant concerned had selected three distilleries of representative character. He has taken into consideration the element of costs involved in manufacture of rectified spirit at various distilleries. He has also taken into consideration the input and costs of production for the period from 01.04.1991 till 31.12.1991 as per the books of accounts. Thus, the Government was satisfied that the fixation of price, was done based on actual costs of production for the said period. Therefore, a conscious decision was taken by the Government to revise the price by holding that, it is quite appropriate to fix the price of rectified spirit retrospectively, even though, the

Chartered Accountant appointed for the purpose, had not recommended for giving effect to the revised rate retrospectively, nor the Excise Commissioner had recommended for such revision retrospectively.

8. However, considering the report of the Chartered Accountant, and revised recommendation by the Excise Commissioner, the Government was pleased to enhance the existing price of rectified spirit from 01.03.1989 to 30.06.1990 at Rs.0.40 per liter and from 01.07.1990 till 30.06.1991 at Rs.1.00 per liter of rectified spirit of non-captive distilleries. It also enhanced the rate of ratified spirit supplied to distillery bottling units at the rate of Rs.1.00 per liter in respect of captive distilleries and Rs.2.00 per liter in respect of non-captive distilleries for the period from 01.07.1991 to 30.06.1992.

9. It is also ordered that the price of the rectified spirit be fixed uniformly at Rs.6.00 per liter, and the bottling units shall pay Rs.6.00 per liter to the non

captive distilleries towards cost of the spirit in case of captive distilleries, the bottling unit was pay Rs.5.00 per liter to the distilleries and the balance Rs.1.00 per liter to the department, with effect from 01.07.1992 as per the report of the Chartered Accountant and as recommended by the Excise Commissioner.

10. However, after extending such benefit, the show cause notice as per Annexure-B dated 26.08.1994 in W.P.No.81694/2013 was issued calling upon the distillery units to repay the amount already paid by extending benefit retrospectively, but restricting the benefit prospectively i.e., from 12.05.1992. The show cause notice refers to the procedure that existed at the relevant point of time to state that, the arrack manufacturing and bottling units to purchase rectified spirit, directly from distilleries at the price fixed by the Government and after manufacturing the arrack, these units were selling the arrack to the

Excise Contractors and the Excise Contractors in turn used to sell it to the consumers at the price fixed by the Government. It is also made clear in Annexure-B that the Government was in no way a part of the actual trading process, insofar as the rectified spirit was concerned, except for the purpose of control and as such the Government was not suppose to bear extra costs towards the revision of the price with retrospective effect.

11. It is pertinent to note that, as per Annexure-A, the revision of the price was suggested by the Chartered Accountant, appointed for the purpose taking into consideration the actual cost of production of rectified spirit, i.e., at no profit no loss basis, rectified spirit was being sold to the arrack manufacturing and bottling units.

12. It is pertinent to note that, the Government has fixed the price, for such, selling to the arrack manufacturing and bottling units, and in turn, such

manufacturing and bottling units would sell it to the Excise Contractors again at the cost to be fixed by the Government. Admittedly, the Government is not involving itself either in manufacturing the rectified spirit, or in manufacturing arrack, or in its bottling or selling the same to the consumers. But it is only controlling the price of the rectified spirit or arrack from the stage of its manufacture till it is sold to the consumers. Admittedly, the Government is getting the commission at each stage on the quantum of the rectified spirit or arrack sold at each level.

13. Even though, the show cause notice states that the Government is not suppose to bear the extra costs towards revision of the price with retrospective effect, Annexure-B is silent as to what was the compulsion for the Government to bear such extra costs towards revision of price granted under Annexure-A. When the Chartered Accountant appointed for the purpose had taken pains in taking

into consideration the actual cost of manufacturing the rectified spirit for the purpose of recommending the revision in the price, and respondent No.2, the Excise Commissioner had accepted such recommendation, and made his own recommendation for revising the price, which are the basis for the Government to extend the benefit retrospectively, the bald show cause notice as per Annexure-B to withdraw such benefit extended retrospectively, but making it only prospectively from 12.05.1992, cannot be upheld under any circumstances.

14. Annexure-C is the objections filed by the petitioner in W.P.No.81694/2013 and similar objections in connected matter highlighting that the Government is the controlling authority to sell the product in each level i.e., rectified spirit to the manufacturer of arrack and bottling units and from the manufacturers of arrack and bottling units to the arrack contractors

and from arrack contractors to the consumers, it cannot turn around and contend that, by mistake such a benefit was extended retrospectively. Annexure-A does not specify anything to extend the benefit retrospectively nor the show cause notice refer any reason for withdrawal of such benefit extended retrospectively.

15. The contention of the learned Additional Advocate General that no constitutional or statutory rights of the petitioners are invaded by withdrawing the revision of the price of rectified spirit retrospectively cannot be accepted for the simple reason that it was not only the legitimate expectation of the petitioners for getting benefits as tried to be contended, but in fact extending the benefit to the petitioners by paying the amount. It is only after lapse of about two years, the show cause notice came to be issued as to why the benefit extended retrospectively should not be recalled. Under such circumstances, the legal

right vests with the petitioners who have accepted the benefit extended by the Government.

16. It is not the contention of the respondents that, the revision of the price of rectified spirit was to benefit the distillery units to gain any profit. It is also not the contention of the respondents that it has invested any money or material either in production of rectified spirit, or arrack, or in bottling or marketing the same. Except saying that, the Government had suffered huge loss by extending the benefit retrospectively, it has not made clear as to why it suffered the loss, when it has not invested anything in the process, but only controlling the price at each level. When the recommendation made by the Chartered Accountant and respondent No.2, the Excise Commissioner, makes it clear that the revision of the price was necessitated taking into consideration the cost of production of rectified spirit, the revision made by the Government to revise the

price retrospectively was a conscious decision. The said decision was not taken overnight. Under such circumstances, the contention of the respondents that Government had suffered loss, cannot be accepted.

17. The contention that, either the Chartered Accountant or the Excise Commissioner have never recommended for giving the benefit of revision of price retrospectively cannot be a ground to now recall the earlier order extending the benefit, when even without such recommendation, the Government has taken the decision to extend the benefit to the distillery units, and such decision cannot be said to be by mistake. The report of the Chartered Accountant making recommendation for revision of price of the rectified spirit and the recommendation made by the respondent No.2, the Excise Commissioner referred to the actual cost of

production of rectified spirit for the period from 01.04.1991 to 31.12.1991.

18. As rightly contended by the learned counsel for the petitioners as per ***Gowri Industries (supra)***, the cost of rectified spirit during 1992-93 was Rs.8.50 per liter, and that in the impugned order, the Government is seeking to withdraw the benefit of fixing the revised rate even at Rs.4.00 per bulk liter of captive distilleries, and Rs.5.00 per bulk liter of non-captive distilleries. Even on that count also, the contention of the respondents – Government that it has resulted in causing loss to the Government can not be accepted.

19. When a conscious decision was taken by the Government based on the report of Chartered Accountant and resultant recommendation by respondent No.2-the Excise Commissioner, it cannot be said that such an order was passed giving benefit to the distillery units casually and without application

of mind. When the petitioners have accepted the benefit extended in their favour, the Government is not justified in recalling the said order unilaterally, that too without assigning any valid reason. The contentions of the respondents that it has suffered loss, and extending of the benefit retrospectively, was a mistake were not justified in any manner.

20. The next contention taken by the leaned Additional Advocate General that, withdrawing the revision of the price of rectified spirit retrospectively, is a policy decision of the Government and therefore it cannot be questioned before this Court also cannot be accepted. Under the guise of taking a policy decision, the Government cannot recall its order extending the benefit after lapse of several years, to make the petitioners to return the benefit without any reasons.

21. Even though learned Additional Advocate General placed reliance on the decision of the Apex Court in

International Trading Co., and another (supra) to contend that the doctrine of legitimate expectation or the principle of promissory estoppels are not attracted to the facts and circumstances of the case, or such legitimate expectation cannot be made applicable in the present cases, it is not the expectation of the petitioners of getting any revised price, but such revision was in fact carried out and the benefit was extended to the petitioners literally by paying the revised price. Under such circumstances, definitely the Government is estopped by the principles of promissory estoppel, to withdraw such benefit already extended and calling upon the petitioners to refund the amount unilaterally.

22. Learned Additional Advocate General has placed reliance on the decision of the Hon'ble Apex Court in ***Ramniklal N. Bhutta and Another (supra),*** to contend that the Court should always lean toward the larger public interest, while exercising the power

under Article 226 of the Constitution of India. There cannot be any dispute with regard to such settled proposition of law. But while exercising the discretion by the Government and extending the benefit to a class of person i.e., manufacturer of rectified spirit after taking into consideration the report and the recommendation by the expert and also the recommendation by respondent No.2, the Excise Commissioner cannot be permitted to withdraw such benefit casually by stating that the Government has suffered loss and has realized its mistake.

23. Even today, leaned Additional Advocate General failed to substantiate his contention as to how the Government has suffered loss, and when it came to the knowledge of the Government about incurring of such loss. Under such circumstances, I do not find any justifiable ground for the respondents to withdraw the benefit and calling upon the petitioners to refund the amount specified above.

24. The order impugned, calling upon the distillery units to repay the amount specified against their names also does not suggest any reasonable ground for such decision of the Government. The contention of the petitioners that, since revision of the price retrospectively was based on the actual costs involved in manufacturing of rectified spirit, is to be accepted as it is highlighted in the report of the Chartered Accountant, and also the recommendation made by respondent No.2. Therefore, I am of the opinion that there is absolutely no justification either to issue the show cause notice as per Annexure-B, or for passing the impugned order as per Annexure-H. Hence, the same are liable to be quashed.

25. Learned counsels for the petitioners contended that since the petitioners have repaid the amount as demanded under protest, they are entitled for refund of the amount along with reasonable rate of interest. Petitioners were granted the benefit of revision of

price of rectified spirit by the Government, and after lapse of more than 10 years, the impugned order as per Annexure-H came to be passed. Upon which, the disputed amount was paid by the petitioners under protest. I do not find any justification to seek interest from the date of payment of the amount by the petitioners till its refund by the respondents. However, a reasonable period is to be fixed to enable respondent No.1 to refund the amount to the petitioners. But if within such reasonable time, the amount is not refunded, definitely the petitioners will be entitled for the reasonable interest at the rate of 6% per annum from the date of payment of the amount by the petitioners under protest till its refund by the Government.

26. In view of the discussions held above, I proceed to pass the following.

ORDER

(i) The writ petitions are ***allowed***.

(ii) The impugned orders dated 18.09.2000 and 15.03.2013 as per Annexures-D & H produced in W.P.No.81694/2013 and Annexures-C and L respectively and order dated 10.03.2014 as per Annexure-M produced in W.P.No.109609/2014 are hereby set aside.

(iii) Consequently, respondent No.1 is directed to refund the amount which is already paid by the petitioners under protest forthwith atleast within three months from today, failing which, the amount shall carry interest at the rate of 6% per annum from the date of receipt of amount till payment, to the petitioners.

Sd/-
(M.G.UMA)
JUDGE

gab & MKM: Paras 1 to 5
EM: Paras 6 to end.
CT:ANB
List No.: 2 Sl No.: 20