

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on 18.12.2024

Pronounced on 31.12.2024

WP(C) No. 3273/2019

...Petitioner(s)/Appellant(s)

M/S Cadila Pharmaceuticals Ltd. Phase-I Industrial Growth Centre, Samba

Vs

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. Excise Commissioner, J&K Government, Excise Department, Jammu
3. Director, Industries, Jammu
4. Deputy Excise Commissioner, Jammu
5. Deputy Excise Commissioner, Lakhanpur

WP(C) No. 2257/2019

M/S Ind Swift Laboratories Ltd Industrial Growth Cwentre, Samba

Vs

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. Excise Commissioner, J&K Government, Excise Department, Jammu
3. Director, Industries, Jammu
4. Deputy Excise Commissioner, Jammu
5. Deputy Excise Commissioner, Lakhanpur

WP(C) No. 2658/2019

Bari Brahamana Industrial Association, BBIA Bhawan, SIDCO Industrial Complex, Bari Brahamana Jammu

Vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. State of J&K through commissioner/Secretary Industries and Commerce Department.
3. J&K Excise Department through Excise Commissioner.

WP(C) No. 2992/2019

Zeiss Pharma Limited Phase-II IGC Sidco Samba

Vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. State of J&K through commissioner/Secretary Industries and Commerce Department.
3. J&K Excise Department through Excise Commissioner
4. Deputy Excise Commissioner, Lakhanpur

WP(C) No. 2993/2019

Anphar Laboratories Pvt. Ltd Industrial Extension Area Phase III Gangyal Jammu

Vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
- 2 State of J&K through commissioner/Secretary Industries and Commerce Department.
- 3.J&K Excise Department through Excise Commissioner
- 4.Deputy Excise Commissioner, Lakhanpur

WP(C) No.3000/2019

Pharose Remedies Ltd. 2nd Milestone, Patli Morh, Tarore, Bari Brahamana

Vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
- 2 State of J&K through commissioner/Secretary Industries and Commerce Department.
- 3.J&K Excise Department through Excise Commissioner
- 4.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3211/2019

Emcure Pharmaceuticals Limited,Lane No.3, Phase-II, Sidco IndustrialComplex,Baribrahamana,

VS

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
- 2 State of J&K through commissioner/Secretary Industries and Commerce Department.
- 3.J&K Excise Department through Excise Commissioner
- 4.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3361/2019

M/S UPL LTD. Phase-I Industrial Growth Centre, Samba
VS

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. Excise Commissioner, J&K Government, Excise Department, Jammu
- 3.Director, Industries, Jammu
4. Deputy Excise Commissioner, Jammu
- 5.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3362/2019

RITZY POLYMERS A Partnership Firm under the Partnership Act,1932 Having its unit(s) at Chemical Zone, Industrial Growth Center,Phase-1,Samba,Jammu

Vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. Excise Commissioner, J&K Government, Excise Department, Jammu
- 3.Director, Industries, Jammu
4. Deputy Excise Commissioner, Jammu
- 5.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3414/2019

MEDLEY PHARMACEUTICALS LTD. lane No.3, Phase-I,
Sidco Industrial Complex, Baribrahamana, Jammu.

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
- 2 State of J&K through commissioner/Secretary Industries and Commerce Department.
- 3.J&K Excise Department through Excise Commissioner
- 4.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3448/2019

M/S OPTIMA FARM SOLUTIONS LTD. Phase-I Industrial
Growth Centre, Samba

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. Excise Commissioner, J&K Government, Excise Department, Jammu
- 3.Director, Industries, Jammu
4. Deputy Excise Commissioner, Jammu
- 5.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3451/2019

MONTAGE ENTERPRISES PVT. LTD. Lane No.4, Phase-I,
Sidco Industrial Complex, Bari Brahmana, Jammu.

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
- 2 State of J&K through commissioner/Secretary Industries and Commerce Department.
- 3.J&K Excise Department through Excise Commissioner
- 4.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3470/2019

ETHICARE LABORATORIES 15 Industrial Estate, Digiana,
Jammu

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
- 2 State of J&K through commissioner/Secretary Industries and Commerce Department.
- 3.J&K Excise Department through Excise Commissioner
- 4.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3479/2019

ACCENT PHARMA Block D, EPIP, Sidco, Kartholi II Bari
Brahamana, Jammu

vs

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
- 2 State of J&K through commissioner/Secretary Industries and

Commerce Department.

3.J&K Excise Department through Excise Commissioner

4.Deputy Excise Commissioner, Lakhanpur
STATE

WP(C) No. 3532/2019

ZUVENTUS HEALTHCARE LIMITED Lane No.3, Phase-II, Sidco Industrial Complex, Baribrahamana, Tehsil and District, Samba

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.

2 State of J&K through commissioner/Secretary Industries and Commerce Department.

3.J&K Excise Department through Excise Commissioner

4.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3604/2019

M/S AGRO LIFE SCIENCE CORP. IID Centre, Plot No. 166-173A, Govindsar District Kathua

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.

2. Excise Commissioner, J&K Government, Excise Department, Jammu

3.Director, Industries, Jammu

4. Deputy Excise Commissioner, Jammu

5.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3664/2019

UFLEX LIMITED UNIT II Lane No.2, Phase-1, Sidco Industrial Complex, Bari Brahmana, Jammu

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.

2 State of J&K through commissioner/Secretary Industries and Commerce Department.

3.J&K Excise Department through Excise Commissioner

4.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3687/2019

RITZY POLYMERS A Partnership Firm under the Partnership Act, 1932 Having its unit(s) at Chemical Zone, Industrial Growth Center, Phase-1, Samba, Jammu

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.

2. Excise Commissioner, J&K Government, Excise Department, Jammu

3.Director, Industries, Jammu

4. Deputy Excise Commissioner, Jammu

5.Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3704/2019

M/S KRISHI RASAYAN EXPORT PVT. LTD. 1st Parallel
Road, IGC, District Samba

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. Excise Commissioner, J&K Government, Excise Department, Jammu
3. Director, Industries, Jammu
4. Deputy Excise Commissioner, Jammu
5. Deputy Excise Commissioner, Lakhanpur

WP(C) No. 3858/2019

UFLEX LIMITED UNIT III Lane No.3, Phase-1, Sidco
Industrial Complex, Bari Brahmana, Jammu

vs.

1. State of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. State of J&K through commissioner/Secretary Industries and Commerce Department.
3. J&K Excise Department through Excise Commissioner
4. Deputy Excise Commissioner, Lakhanpur

WP(C) No. 4412/2019

VIVEK PHARMACHEM INDIA LIMITED EPIP
Baribrahmana, Jammu.

vs.

1. UT of Jammu and Kashmir through Commissioner Secretary to Government, Finance Department.
2. UT of J&K through commissioner/Secretary Industries and Commerce Department.
3. J&K Excise Department through Excise Commissioner
4. Deputy Excise Commissioner, Lakhanpur

For
petitioners: Mr. Pranav Kohli Sr. Advocate with
Mr. Arun Dev Singh Advocate
Mr. Amar Pratap Singh Advocate
Mr. Vishal Goel Advocate.
Mr. J. A Hamal Advocate.
Mr. Aftab Malik Advocate.

For respondents:

Ms Monika Kohli Sr. AAG

CORAM:**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE****HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE****J U D G M E N T****Sanjeev Kumar J**

1 The petitioners in all these petitions are entrepreneurs who have established their industrial units in the UT of Jammu and Kashmir. Some of these units are engaged in the manufacturing of medicinal and toiletry preparations, whereas the others manufacture various products out of the raw materials, such as absolute alcohol/denatured spirit/special denatured spirit/rectified spirit/plain spirit, etc. They are aggrieved of and have challenged sub-clause (B) of Clause 14 “Excise Duty-Civil” of Excise Policy 2019-20 [“Excise Policy 2019-20”] to the extent it provides for the levy of excise duty at the rate of Rs. 10 per litre in respect of rectified spirit/alcohol and denatured spirit used in medicinal and toiletry preparations, other than in manufacture of liquor.

2 The impugned clause of the Excise Policy 2019-20, promulgated vide SRO 128 dated 25.02.2019, is challenged primarily on the ground that the then State of Jammu and Kashmir, as it was before the promulgation of the J&K Reorganization Act, 2019, did not have the legislative competence to impose a levy of excise duty on the rectified spirit etc. for use in medicinal and toiletry preparations and also that the raw material procured by the petitioners i.e rectified spirit etc., is exigible to Goods and Services Tax (GST) under Integrated Goods and Services Act 2017 and, therefore, levy of duty of excise on the same product amounts to double taxation, which is not permissible in law.

3 The writ petitions are opposed by the State (now UT of Jammu and Kashmir) on the ground that the alcoholic liquor/alcohol falls within the

legislative competence of the State, in that, prior to the abrogation of Article 370 of the Constitution of India, all residuary legislative powers were vested in the erstwhile State of Jammu and Kashmir. It is submitted that Entry 84 of the Union list, as recast by virtue of the Constitution (One hundred and First Amendment), 2016, does not make any mention of the rectified spirit/denatured spirit used in medicinal and toiletry preparations. It is further submitted that Entry 84 of the Union list is not applicable to the cases on hand. It is pleaded in the reply affidavit filed by the respondents that the State legislature derived its power to legislate on the excise duty under Section 5 of the Constitution of Jammu and Kashmir. To sum up their response, the respondents have submitted that, with the implementation of the Goods and Services Tax Act as applicable to the State of Jammu and Kashmir on 07.07.2017, the J&K VAT Act, J&K Entry Tax on Goods Act, 2000, J&K Entertainment Tax Act, 1962 and J&K Entertainments Duty Act, 2016 came to be repealed. J&K Excise Act, 1958 [“State Excise Act”] which was enacted by the then State of Jammu and Kashmir, remained intact and that it is in the exercise of powers conferred by the State Excise Act, the impugned clause in the Excise Policy of 2019-2020 has been framed.

4 Having heard learned counsels for the parties and perused the material on record, it is necessary to first advert to the Excise Policy 2019-20 promulgated vide SRO 128 dated 25-02-2019 and the impugned clause 14 (B) thereof. The impugned clause reads thus:

14. Excise Duty: -CIVIL

A.....

B Rectified spirit, alcohol, denatured spirit and molasses

Type	Rate
Rectified spirit/alcohol/denatured spirit for use in medicinal and toiletry preparations,	Rs.10/litre

other than in manufacture of liquor	
Molasses	Rs.20 per quintal

5 SRO 128 (supra) professes to promulgate the Excise Policy 2019-20, which was to come into force on 26.02.2019 and to remain in force till 31.03.2020. The policy, as is apparent from reading of its objectives, was issued to simplify the regulatory structure by rationalizing and reducing the number of taxes, duties and other levies, thereby maximizing revenue realization. It also aimed to promote greater social consciousness about the harmful effects of consumption of liquor and alcoholic beverages etc. Apart from providing other measures, it also fixed the rate of excise duty payable under the State Excise Act. So far as excise duty on the rectified spirit/alcohol/denatured spirit for use in medicinal and toiletry preparations is concerned, the policy prescribed a levy of duty at the rate of Rs.10 per litre.

6 The petitioners have challenged the impugned clause on two grounds: (i) legislative competence, and (ii) double taxation.

Legislative competence:

7 Since the petitioners have raised the issue with regard to the legislative competence of the State to impose the impugned levy, it would, therefore, be desirable to trace out the power in the exercise whereof the rectified spirit/alcohol/denatured spirit for use in medicinal and toiletry preparations has been levied with duty of excise at the rate of Rs.10 per litre.

8 Way back in Svt. 1955, the State of Jammu and Kashmir, with a view to consolidating and amending the law relating to the import, export

transport, manufacture, sale and possession of intoxicating liquor and intoxicating drugs in the State of Jammu and Kashmir, enacted the State Excise Act. The term “liquor” is defined under subsection (3) of Section 3 of the Act. It reads as under:

“3(3) “Liquor” means intoxicating liquor and includes spirits of wine, methylated spirits, spirits, wine, beer and all liquids consisting of or containing alcohol; also any substance which the Government may by notification in the Government Gazette declare to be liquor for purposes of this Act”

9 From the aforeaid definition, it is abundantly clear that “liquor” includes spirits of wine, methylated spirits, spirits, wine, beer and all liquids consisting of or containing alcohol. Section 5 of the State Excise Act provides that no liquor or intoxicating drugs shall be imported in the State of Jammu and Kashmir except after payment of any duty to which it may be liable under this Act. For facility of reference, Section 5 is also set out below:

“5.Import of liquor and intoxicating drugs-

No liquor or intoxicating drug shall be imported into the Jammu and Kashmir State except :- (a) after payment of any duty to which it may be liable under this Act, or execution of a bond for such payment, and

(b) in compliance with such conditions as the Government may impose”.

10 The duty on the import of liquor or intoxicating drugs in the State of Jammu and Kashmir is leviable under Section 16 of the Act which reads as under:

“16 Duty on liquor or intoxicating drugs.-

A duty shall, if the Government so direct, be levied on all liquor and intoxicating drugs manufactured in the territories of the State or imported into or exported from the State of such amount as the Government may from time to time prescribe;

Provided that it shall be lawful for the Government to exempt any liquor or intoxicating drug from any duty to which the same may be liable under any of the provisions of this Act”.

11 It is, thus, evident that in terms of Section 16, the Government is empowered to levy duty on all liquor and intoxicating drugs manufactured in the territories of the State or imported into or exported from the State. The Government is also empowered to prescribe the rate of such duty. It is in the exercise of powers conferred upon the Government under Section 16 of the State Excise Act, the impugned clause in SRO 128 (supra) has been framed and a duty at the rate of Rs.10 per litre has been imposed on rectified spirit/alcohol/denatured spirit for use in medicinal and toiletry preparations. The aforesaid raw materials used in the manufacture of liquor are, however, exempted.

12 It is neither the argument of any of the learned counsel appearing for the petitioners, nor do we find any pleadings in any of the writ petitions that the State Excise Act is *ultra vires* the Constitution or beyond the legislative competence of the State. If the State Excise Act is *intra vires* and falls within the legislative competence of the State, no fault could be found with the impugned clause in SRO 128 (supra), which has been framed by the Government in exercise of powers conferred upon it under Section 16 read with Section 5 of the State Excise Act. Neither Section 5, nor Section 16 are subject matter of challenge in these petitions. The challenge to the impugned clause in SRO 128 (supra) is, thus, liable to be rejected on this solitary ground without going into other arguments raised by learned counsels appearing for the petitioners in these matters.

13 The Excise Policy 2019-20 issued vide SRO 128 (supra) covers two periods. The first period commences from 26.02.2019 to 05.08.2019 when Article 370 of the Constitution of India was abrogated. The second period commences from 05.08.2019 to 31.03.2020. During the Excise Policy

2019-20 period, there were significant developments viz. the abrogation of Article 370 of the Constitution of India and the enactment of the J&K Reorganization Act, 2019 .

14 So far as the period from 26.02.2019, to 05.08.2019 i.e till Article 370 was abrogated in respect of State of Jammu and Kashmir is concerned, the indisputable position is that there was no State list applicable to the State of Jammu and Kashmir and the residuary powers of legislation were vested in the State legislature. The levy of duty of excise on the manufacture, sale and possession of liquor and intoxicating drugs within the State as well as import and export of liquor and intoxicating drugs, is governed by the State Excise Act which has been enacted under the residuary powers of legislation conferred by the Constitution of India read with Section 5 of the then State Constitution.

15 Entry 84 of the Union list, as it stood prior to its substitution by the Constitution (One Hundred and First Amendment) Act, 2016, clearly conferred legislative competence on the Parliament to legislate with respect to the duties of excise on tobacco and other goods manufactured or produced in India, including the medicinal and toiletry preparations containing alcohol. The duty of excise referable to Entry 84 is only with regard to aforementioned goods manufactured and produced in India and does not touch upon such goods imported in or exported from a particular State. Entry 84 even after its amendment w.e.f 16.09.2016 does not take away, in any manner, the legislative competence of the State of Jammu and Kashmir to levy duty of excise on the import of liquor in the State of Jammu and Kashmir for manufacture of medicinal and toiletry preparations etc. Entry 54 of the State list, which in any case was not applicable to the State

of Jammu and Kashmir prior to 5th August 2019 when Article 370 of the Constitution was suitably amended and abridged, only provides for the imposition of taxes through legislation on the sale of various commodities, including alcoholic liquor for human consumption. Entry 51 of the State list, which was relied upon by the learned counsel for the petitioners, to buttress their argument, was not applicable to the State of Jammu and Kashmir when the impugned excise policy was promulgated. The Entry, as is apparent from its bare reading, confers legislative power on the States to impose excise duty on goods manufactured and produced within the State, including alcoholic liquor for human consumption and excludes medicinal and toiletry preparations containing alcohol etc.

16 The argument of the learned counsel for the petitioners that, in terms of Entry 84 as it stood prior to its amendment, the power to levy duty of excise on the alcoholic liquor unfit for human consumption and used for medicinal and toiletry preparations vested exclusively with the Parliament is partially correct. As explained above, Entry 84 deals only with the goods manufactured and produced in India and does not take within its sweep the goods imported in the State for its use in medicinal and toiletry preparations. The Entry 84 of the Union list, thus, cannot be said to have taken away the legislative competence of the State of Jammu and Kashmir, which it exercised under the residuary powers reserved to it by the Constitution. The Entry 84 of Union list went under complete makeover after Hundred and First Amendment of Constitution in the year 2016.

17 Entry 51 of the State list was not applicable to the State of Jammu and Kashmir. Even the said Entry only dealt with the manufacture and production of goods, including alcoholic liquor for human consumption

and excluding medicinal and toiletry preparations containing alcohol in the State. As the position stood prior to the abrogation of Article 370 of the Constitution of India, the executive and legislative powers of the State were extended to all matters except those with respect to which Parliament had the power to make laws for the State under the Constitution of India.

18 As already noted, when the GST regime was extended to the State of Jammu and Kashmir and the CGST and IGST Acts were applied, the State Excise Act was neither repealed nor subsumed by the enactment of the Jammu and Kashmir Goods and Services Tax Act, 2017.

19 Viewed from any angle, we are unable to accept the argument of learned counsel appearing for the petitioners that the impugned clause in the Excise Policy 2019-2020, promulgated vide SRO 128 (supra), was beyond the legislative competence of the State.

20 As explained above, and is stated at the cost of repetition, the State Excise Act was indisputably within the legislative competence of the State when it was enacted and continues to remain so even as on date. Otherwise also, there is no challenge to the *vires* of the State Excise Act. The impugned clause in the policy has been framed by the Government of Jammu and Kashmir in the exercise of powers vested in it under Section 16, read with Section 5, of the State Excise Act. So long as we do not find any fault with the State Excise Act, and in particular, with Sections 5 and 16 thereof, the impugned clause in the Excise Policy cannot be declared bad and unconstitutional for being beyond the legislative competence of the State Legislature. We, however, find substance in the submission of the learned counsel appearing for the petitioners who are not using in their units rectified spirit/alcohol and denatured spirit etc. for medicinal and toiletry

preparations. This so because the impugned clause itself makes it clear beyond any doubt that what is sought to be levied as the duty of excise at the rate of 10 per litre is only on the rectified spirit/alcohol/denatured spirit imported in the State of Jammu and Kashmir for its use in medicinal and toiletry preparations. The expression “other than in manufacture of liquor” is redundant appendix and needs to be ignored. As a matter of fact, the import of rectified spirit/alcohol/denatured spirit in the State of Jammu and Kashmir for its use in the manufacture of liquor or any other preparations, excluding the medicinal and toiletry preparations, is not leviable under the impugned clause with the duty of excise at the rate of 10 per litre.

Double taxation:

21 An argument was raised by some of the learned counsels that, with the substitution of Entry 84 of List I and the repeal of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, by Section 174 of CGST Act, 2017, the Central Government is left with no power to levy duty of excise on medicinal and toilet preparations. It is argued that the position, as it emerges after the implementation of the GST regime, is fortified by Section 9 of the CGST Act, which provides for the levy of a tax called “Central Goods and Services Tax” on all intra-State supplies of goods and services or both, except on the supply of alcoholic liquor for human consumption and undenatured extra neutral alcohol or rectified spirit used for the manufacture of alcoholic liquor for human consumption. It is, thus, contended that rectified spirit, alcohol, or denatured spirit except when used for the manufacture of liquor fit for human consumption supplied intra-State as well as inter-State, is exigible to CGST and IGST under Section 9 of the CGST Act, 2017, and Section 7 of the IGST Act, 2017 respectively and,

therefore, the imposition of duty of excise on the import of these goods by the State/Union Territory amounts to double taxation, which is impermissible in law.

22 We have given thoughtful consideration to the argument vehemently made by some of the learned counsel appearing for writ petitioners. We must bear in mind that what is levied under the CGST Act, 2017, and the IGST Act, 2017, is a tax, a necessary exaction of money to fund public expenditure. Such a tax is levied generally on the supply of goods and services. This is essentially a replacement of the tax which was earlier levied on intra-State and inter-State sales of goods through State GST Act and CGST Act.

23 The duty is a specific type of tax applied to goods, typically when they are manufactured, imported, or exported. Duties of excise are levied on the manufacture of goods and their import into or export from a State. Customs duty is a duty which is imposed on imports into and exports from a State. There is no dispute that when levies are legally distinct, they can be charged simultaneously. The tax under the CGST Act, 2017 and the IGST ACT, 2017, and the duty of excise under the State Excise Act are legally distinct and address separate stages of economic activity. The plea of “double taxation” is, thus, a hollow argument unworthy of acceptance.

24 May be it is true that rectified spirit, alcohol, or denatured spirit supplied in the State of Jammu and Kashmir (now UT of J&K) from other State/States is exigible to tax under Section 7 of IGST Act, 2017, except when used for the manufacture of liquor fit for human consumption. However, that does not take away the power of the State to levy a duty of excise under Section 16 of the State Excise Act when such goods are

imported by a unit for use in medicinal and toilet preparations. The IGST is charged by the Center on inter-State supply of goods and services, as per nature of such goods or services, as the case may be. The duty of excise impugned is on the quantity of goods imported for a particular use. The two levies, being legally distinct, can be levied simultaneously, and such a levy is not hit by the double taxation, as urged by learned counsel appearing for the petitioners.

25 We have deliberately avoided to go into the change in the legal landscape under the Constitution (Application to Jammu and Kashmir) Order, 2019, and its impact on the instant litigation. It is so because these petitions were filed before 5th August, 2019 and are devoid of any pleadings or plea in this regard. Nor, the learned counsel argued on the effect of changes brought about by the Constitution Order, 2019 (supra) on the legislative competence of the Union Territory of Jammu and Kashmir to levy duty of excise impugned in these petitions.

Conclusions:

26 In view of the foregoing discussion and the conclusions arrived at, we find no substance in the petitions where the petitioners' units are importing rectified spirit/alcohol/denatured spirit for use in medicinal and toiletry preparations. However, the petitioners, who are importing the aforesaid goods, either for the manufacturing of liquor or other preparations, excluding the medicinal and toiletry preparations, are exempted and are not liable to pay any duty in terms of the impugned clause. This is the plain interpretation of the impugned clause.

27 For the foregoing reasons, the writ petitions where the petitioners are importing rectified spirit/alcohol/denatured spirit for its use in the manufacture of medicinal and toiletry preparations are found devoid of merit and the same are, accordingly, dismissed. However, the writ petitions in which the petitioners are utilizing the aforesaid raw material for manufacture of goods, including liquor other than medicinal and toiletry preparations, are allowed, holding that they shall not be liable to pay any duty of excise in terms of the impugned clause of the Excise Policy 2019-2020. The respondents shall determine, in each case, as to whether the petitioners are using/importing the raw material aforesaid for the manufacture of medicinal and toiletry preparations or not and, accordingly, take a decision. The petitioners, who are found not using the aforesaid raw material for manufacture of medicinal and toiletry preparations shall be entitled to a refund of excise duty, if any, charged from them under the impugned clause of the Policy.

With the aforesaid observations, all the petitions are disposed of.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
31 .12.2024

Sanjeev

Whether order is reportable:Yes