IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.875 OF 2012

M/s United Sprits Ltd.,
Formerly known as
M/s Mc Dowell & Co.,
having its registered office at
9th Floor, UB Tower, UB City, 24,
Vittal Mallya Road,
Bangalore 5600001
Through its authorized signatory &
Power of Attorney holder,
Shri. Sudhir Kaushal, Deputy General, Major
Manager, M/s United Spirits Ltd. ... Petitioner.

Versus

1. The Commissioner of Excise,
Government of Goa,
Having his office at
Old High Court Buiding,
Panaji Goa.

2. The Chief Secretary, State of Goa,
Appellate Authority, under Section 40
of the Goa Excise Duty Act, 1964,
having his office at Secretariat,
Porvorim – Goa.

3. State of Goa,
Through its Chief Secretary,
Having his office at Secretariat,
Porvorim – Goa.

4. Excise Inspector, I/C
M/s United Sprits Ltd.,
Bethora, Ponda Goa.

5. Department of Excise,
Through the Commissioner of Excise,
Having his office at ... Respondents.
Old High Court Building,
Panaji Goa.

Mr. Sandesh. D. Padiyar with Mr. P. Shirodkar, Advocates for the Petitioner.

Mr. Devidas Pangam, Advocate General with Ms. Sapna Mordekar, Additional Government Advocate for the Respondent - State.

Coram: M.S. SONAK &
SMT. BHARATI H. DANGRE, JJ.

Date: 9th March 2021

ORAL JUDGMENT: (PER M.S. SONAK, J)

Heard Mr. S. D. Padiyar and Mr. P. Shirodkar for the Petitioner and Ms. S. Mordekar, learned Additional Government Advocate for the State.

2. The Petitioner by instituting the present petition has applied for the following reliefs:-

> *"a. For a declaration under Article 226 of the Constitution of India declaring Rule 47 of the Goa Excise Duty Rules, 1964 in so far as it authorizes or empowers levy and payment of duty on all spirits which are in excess of all the allowance for wastages specified by the Government of Goa from time to time by notification in the*

official gazette and the notification no. FIN(REV)/2-35/part/1/68 dated 24/06/1970 issued by the State government, Respondent No.3, till the time the same was in force as unconstitutional ultra-vires of the powers of State legislature and of the Constitution of India, invalid and void.

b. For a declaration under Article 226 of the Constitution of India declaring all actions of the Respondents on the basis of impugned notice dated 09/06/1995 at Annexure P-6 to the Petition and impugned notices dated 19/09/1995, 24/10/1995, & 08/02/1996 at Annexure P-10(Colly) to the petition and imposition of levy of Rs. 42,83,368/- on the Petitioner on the basis of the said notices as illegal, void and invalid.

c. For a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India striking down the Rule 47 of the Goa Excise Duty Rules, 1964 in so far as it authorizes or empowers levy and payment of duty on all spirits which are in excess of all the allowance for wastages specified by the Government of Goa from time to time by notification in the official gazette and the notification issued by the State government, Respondent No. 3, in excise of powers conferred under Rule 47 of the Goa Excise Duty Rule 1964 as unconstitutional, illegal, ultra-vires, arbitrary and void;

d. For an appropriate writ or order or direction under Article 226 and 227 of Constitution of India not limiting to a writ of certiorari calling tor the records and proceedings underlying the orders dated 27/06/2007 and 03/10/2012, at Annexure -P-15 and Annexure P-18 respectively as well as notices dated 09/06/1995 at Annexure-P-6 and Notices dated 19/09/1995, 24/10/1995, and 08/02/1996 at Annexure P-10 (colly) to the Petition and after going through the legality, validity, correctness, propriety and regularity of the same, to quash and set aside the same.

e. For an appropriate writ, order or direction under Article 226 and Article 227 of Constitution of India prohibiting and/ or restraining the Respondents from recovering the amount of Rs. 42,83,368/- as an excise duty on excess wastages of alcohol alleged to have been incurred by the Petitioners on the basis of impugned *orders dated 27/06/07 and 03/10/2012 and notices dated 09/06/1995 at Annexure P-6 and notices dated 19/09/95, 24/10/95, 8/2/1996 at Annexure P-10 (colly) and further restraining the Respondents from calculating the wastages of alcohol in a stage wise basis in terms of notifications issued under Rule 47 of Goa Excise Duty Act, 1964 and/ or from giving effect to the said notifications in any manner whatsoever.*

f. Issue appropriate writ or direction to the Respondents State of Goa and its Excise Department Officers directing refund of the excise duty paid on the alleged excess wastages under the impugned Notice dated 09/06/1995 at Annexure P-6 and Notices dated 19/09/1995, 24/10/1995, and 08/02/1996 at Annexure P-10 (colly) to the Petitioner."

3. In terms of prayer clause (d), there is a specific challenge to order dated 27.06.2007 made by the Commissioner of Excise and order dated 03.10.2012 made by the Chief Secretary, the appellate authority under the Goa Excise Act and the rules made thereunder.

4. Mr. Padiyar contended before us that the challenge to Rule 47 of the Goa Excise Duty Rules, 1964 is premised on the fact that the Respondents, by resort to the impugned Rule, were bent upon levying excise duty or other charges on wastages, which were not even potable. He submitted that the State has no legislative competence to levy any duty or charges on non potable alcohol.

5. Ms. Mordekar, learned Additional Government Advocate, pointed out that the aforesaid issue really does not arise in the present matter because of the factual findings that the wastages in the present case were analysed and found to be potable. She refers to the analytical report dated

25.11.1994 relied upon by both the Excise Commissioner as well as the appellate authority under the said Act.

6. Mr. Padiyar then pointed out that the analytical report dated 25.11.1994 was never furnished to the Petitioner in the course of the proceedings before the learned Excise Commissioner. He therefore submits that no opportunity was granted to the Petitioner to deal with the report dated 25.11.1994 and to this extent there is violation of principles of natural justice .

7. Now if the records are perused, it cannot be said that the analytical report dated 25.11.1994 which is relied upon by the Excise Commissioner was furnished to the Petitioner before the Excise Commissioner made his order dated 27.06.2007. The Petitioner, in his memo of appeal has raised a specific ground (XXXI) urging that the learned Commissioner erred in relying upon the analytical report dated 25.11.1994 without the Appellant (Petitioner) having any opportunity to deal with the same and without asking for the Appellants' comments on the same.

8. The appellate authority has also relied upon the analytical report dated 25.11.1994 but not dealt with the issue of fair opportunity raised by the Petitioner, on account of non supply of the copy of the analytical report dated 25.11.1994.

9. Even in this petition, the Petitioners have raised the ground that there was violation of natural justice for non supply of the analytical report dated 25.11.1994, which is the basis for the conclusion drawn by

the Commissioner of Excise as well as the appellate authority that the wastages were potable in nature.

10. From the return filed on behalf of the Respondents, we do not find any specific denial to the pleading that the copy of the analytical report dated 25.11.1994 was not supplied to the Petitioner before the Commissioner of Excise made the impugned order dated 27.06.2007.

11. Thus, on the short ground of violation of natural justice, the impugned orders dated 27.06.2007 and 03.10.2012 are required to be set aside and are hereby set aside.

12. The Petitioner, by now, has been furnished the copy of the analytical report dated 25.11.1994. The Petitioner is now granted six weeks time to file additional response before the Commissioner of Excise in the context of this analytical report. The matter is restored to the file of the Commissioner of Excise who shall now dispose off this matter by taking into consideration the additional submissions which will be made by the Petitioner on this issue of analytical report dated 25.11.1994. The Commissioner of Excise to dispose off the matter as expeditiously as possible and in any case within a period of three months from the date the Petitioner files the additional submissions. Needless to add that the Excise Commissioner will have to grant a fresh opportunity of hearing to the Petitioner.

13. The amount deposited by the Petitioner by way of security in compliance of the impugned order to remain deposited and the same

shall abide by the orders which the Commissioner of Excise shall make in pursuance of this demand. Liberty is granted to the parties to apply.

14. If ultimately, it is found that the wastages were also potable, then, there might be no occasion to go into the challenge of vires of Rule 47 of the Goa Excise Duty Rules.

15. The Rule in this petition is made partly absolute in the aforesaid terms. There shall be no order as to cost.

16. All concerned to act based on authenticated copy of this order.

BHARATI H. DANGRE, J **M.S. SONAK, J.**

jfd/-