IN THE HIGH COURT OF BOMBAY. AT GOA
APPELLATE SIDE

WRIT PETITION NO.747 OF 2012

1. M/s.Tetra Queens Distilleries and
Breweries (P) Limited, a Private Limited
Company constituted and incorporated under
Companies Act, 1956, having its factory and
office at Sukhtholem, Mollem, Goa,
through its Director
Mr.Corneli Peter s/o Mr.Peter,
Age 61 years, R/o.Parakal House,
C.P.Thuruth, N.Parur, Kerala.

2. Mr.Corneli Peter, Major,
R/o.Parakal House, C.P.Thuruth,
N.Parur, Kerala. Petitioners

versus

1. The Chief Secretary,
Government of Goa, Secretariat,
Porvorim, Goa.

2. Commissioner of Excise,
Office of the Commissioner of Excise,
Government of Goa,
Near Customs House, Panaji, Goa. Respondents

Mr.Pundalik Sameer Khedekar, Advocate for Petitioners.
Mr.Pravin N. Faldessai, Advocate for Respondents.

CORAM : PRAKASH D. NAIK AND
B.P.DESHPANDE, JJ.

Date of reserving the Judgment : 1st September 2023

Date of pronouncing the Judgment : 12th February 2024

JUDGMENT – (Per : Prakash D. Naik, J.) :-

1. Petitioners are aggrieved by the show cause notice dated 21st June 2011 issued by Commissioner of Excise u/s.20 of Goa Excise Duty Act and Rules, 1964 (`Excise Act and Rules' for short), Order dated 26th July 2011 passed by Commissioner of Excise, and Order dated 3rd October 2012 passed by Chief Secretary and Appellate Authority, Government of Goa.

2. Petitioner no.1 was granted excise licenses for manufacture of Indian made foreign liquor (IMFL). Petitioner no.1 started its factory after obtaining excise licenses at Suktholam, Mollam, Goa.

3. On 22nd September 2010 Petitioner no.1 issued a letter to Commissioner of Excise stating that due to financial problems faced by the unit, it is decided to stop all activities of Petitioner no.1 for some period from 23rd September 2010. On 23rd September 2010 the officials of Respondent no.2 carried out inspection of Petitioners' premises in order to take stock of excisable material. Inspection report was prepared on 23rd September 2010. Panchanama was also recorded on the same day. On 27th September 2010 second inspection was conducted at the premises. Several discrepancies were noted. Panchanama was recorded on 27th September 2010.

4. Show cause notice was issued to the Petitioner no.1 on 19th October 2010. In the show cause notice it was stated that during the inspection on 23rd September 2010 Alcohol/ENA was found in alcohol bonded warehouse. The quantity found in tanks in Bulk Liters (`BL' for short) was 2,27,452. The alcohol/ENA was found in bottling hall. The quantity was 39,755 BL. Total alcohol/ENA was

found worked out to be 2,67,209 BL. The alcohol/ENA register maintained by unit indicated the balance as 1,47,260 BL, being 1,19,949 BL in excess. The inspection team found that alcohol tanks bearing nos.1, 2 an 3 installed in the bottling hall are not kept under double lock system as per mandatory requirement. The inspection team found one pouch filling machine installed which was loaded with one pouch roll ready for use in the bottling hall. Sixteen more pouch rolls were also found in the bottling hall of the unit. The pouches are of `Extra Strong Red Bull Whiskey'. The label of `Extra Strong Red Bull Whiskey' is not registered with the Excise Department. Thus, Petitioner no.1 was illegally manufacturing and packing/bottling whiskey under the brand name `Extra Strong Red Bull Whiskey'. Verification of various blends of liquor stored in the tanks in the blending room were found to be 12,980 BL. As per balance of various blends recorded in the blending register of the unit, the total quantity of liquor should have been 19,995 BL. However, the actual blend found during the inspection as indicated above as 12,980 BL. Hence there was unexplained shortage of 7015 BL of blend of liquor. 956 cases of IMFL is found to be tallying with the records maintained by Petitioner no.1. In the presence of unit representatives and witnesses the inspection team had drawn number of samples of the blends and the same were sent to FDA for analysis and out of those 8 samples were given to the unit representatives. In order to ascertain whether unit has actually stopped functioning w.e.f. 23rd September 2010, second inspection was carried on 27th September 2010 at 14.15 hours by the inspecting team. The representatives of team and independent panch witnesses were present. During the second inspection alcohol/ENA was found in bonded warehouse and plastic tanks. The alcohol/ENA was also found in tanks and plastic cans in bottling hall. As per official records maintained by the Inspector, in-charge of the unit, in the register of alcohol/ENA, the strength of collected samples should have been 67.2 O.P which is in fact in variance when compared to the analysis contained in the analytical report of FDA from 66.4 to 68.7 O.P thereby clearly indicating that the unit in connivance with Excise Inspector, in-charge has tampered with the strength of alcohol, specially in tank no.3 where over 50% of its contents was found to be water. The analysis made by FDA of the samples of alcohol/ENA drawn on 27th September 2010 from tank nos.2,3,4, 8 and 9 in the presence of the representatives of the unit and witnesses showed the strength of alcohol/ENA as 96.5%, 53.2%, 94.7%, 96%, 96% in tank nos.T-2, T-3, T-4, T-8 and T-9. It was further stated that office records maintained by the unit i.e. register of alcohol/ENA shows that its strength is 67.2 O.P and the alcohol as verified by FDA and as seen above varies from 66.7 to 68.08 O.P thereby indicating that the unit in connivance with the Excise Inspector in-charge has tampered with the strength of alcohol, as revealed from the analytical report of FDA specially in tank no.3 where over 50% of its contents was found to be water. The analysis of samples obtained of blends on 27th September 2010 in the presence of the representatives of the unit concerned done by the FDA from tank nos.1,2,3 and 4 indicated to be 43.1%, 37.0%, 42.6%, 63.7% respectively in tank nos. BT-1, BT-2, BT-3 and BT-4. The findings of FDA pointed out that tank no.BT-4 contained percentage of 0.16% Methanol which renders the said blend as unfit for human consumption.. From the comparison of inspection reports, analysis of FDA reports, verification of blends, alcohol register and bottling register, discrepancies/disparities on the part of Petitioner no.1 were noted. The disparity is in spite of the u nit not carrying on any releases of alcohol/ENA and carrying on production of blends and release thereof for the period from 23rd September 2010 to 27th September 2010. This quantity of blend although shown on the blending register was never found physically on the date of inspection on 23rd September 2010 or 27th September 2010. On perusing the bottling registers maintained by unit the same indicate the blends of various IMFL brands. However, these blends were not found on physical verification by the inspecting team either on 23rd September 2010 or 27th September 2010. Petitioner no.1 violated the provisions of Excise Act and Rules. Petitioner no.1 violated the provisions of Section 4(i), 6, 7, 8 and 15(i)(iii) and Rules 16(1)(1), 28 and 30 of Excise Act and Rules. Show cause notice was issued in exercise of powers u/s.16 of Excise Act and Rules calling upon Petitioner no.1 to show cause as to why licenses issued for manufacture of IMFL, bottling of IMFL, manufacture of Wine, bottling of Wine, blending of Country Liquor, bottling of Country Liquor and Private Bonded Warehouse respectively situated at Sangod Village, Sukhtolim, Mollem, Sanguem, Goa issued in the name of Petitioner no.2 should not be cancelled for the violations and confiscate the liquor under the provisions of Excise Act and Rules.

5. Petitioners filed reply dated 29th October 2010 to the show cause notice dated 19th October 2010 and contended that on 23rd September 2010 in order to take stock of excisable articles in the unit the excise team headed by Assistant Commissioner of Excise visited their unit and took stock of the excisable articles. During that inspection their technical person was not present. During inspection it was observed that there was excess of 1,19,949 BL of ENA and shortage of blend to the tune of 7,015 BL. On 27th September 2010

second inspection was carried out and it was found that there was shortage of 45,983 BL of ENA and stock of 15,570 BL of blend. On 23rd September 2010 as soon as inspection was over, IMFL bond room, spirit storage room and bottling hall were locked with new locks and sealed by the inspecting team and on 27th September 2010 the second inspecting team verified that all the seals were intact and after that the seals were opened for second inspection. So it is clear that unit has not tampered or fraudulently pilfered with the stocks of alcohol/ENA. Negligible variations in strength is due to temperature variation of the storage rooms and due to evaporation losses only. During the first inspection the inspection team has left out to notice the blending tank no.4 which is containing 2,325 BL of unfinished brandy blend which is under processing for maturation purpose. Both the inspection reports regarding stock of ENS and blends show contradictions. Request was made to conduct another inspection so that they can call technical person who was presently not with them. If any shortage has been found they are ready to pay duty/penalty. It was further stated that position of ENA tank nos.1, 2 and 3 was having a side wall along with fencing and door with lock but during the fire accident occurred in unit, it was collapsed as debris and removed. It appears that above tanks are covered with three side walls along with roof and the front side will be covered with fencing with door lock and it will be rectified as per excise specifications. Regarding the pouch filling and sealing machine, they have applied for installation to the Commissioner of Excise, Panji, Goa. By the time machinery has reached their unit and engineer from supplier side was checking the functioning of the machinery by loading empty pouches of `Extra Strong Red Bull Whiskey' and as they are in the process of label registration of above brand, the time the inspection team has arrived. As per FDA analysis report when all the 8 ENA stored samples from tank nos.2, 3, 4, 5, 6, 7, 8 and 9 indicate negative for methanol, then how can the blending tank no.4 material can show positive for methanol. Because the ENA has come from ENA storage tanks. Survey has been made for various methods for search of Methanol.

6. The Commissioner vide Order dated 8th October 2010 directed recovery of dues, imposed fine and confiscation of liquor. The Petitioners challenged the said order by preferring Appeal No.6 of 2011. The appeal was partly allowed by Order dated 3rd October 2012. The said Orders are challenged by Petitioners by preferring Writ Petition No.746 of 2012.

7. The Commissioner of Excise issued separate show cause notice dated 21st June 2011 to Petitioner no.1. In the show cause notice it was stated that in the year 2008 six import permits to import ENA from M/s.HSB Agro Industries Pvt.Ltd, Rajasthan bearing Import Permit Nos.825, 826, 827, 828, 829, 830, dated 11th August 2008 were issued to Petitioner no.1. Rajasthan Excise authorities vide letter dated 11th May 2011 have informed that against above import permits six export permits were issued to Petitioner no.1 and that the Excise Commissioner, Rajasthan had directed vide order dated 4th May 2011 and 5th May 2011 to verify the export of ENA from Rajasthan through their officer. The dispatches of ENA were made on the basis of transport passes and indicated in the notice. On perusing the register maintained by Petitioner no.1 it is observed that no entry of imports of alcohol/ENA have been shown pertaining to the above import permits numbering from 825 to 830 (6 permits) 11th August 2008, even though the unit had lifted the material from

M/s.HSB Agro Industries Pvt.Ltd, Rajasthan, thereby violating the provisions of Section 15(1)(ii) r/w Rule 10 and Rule 46 of Excise Act and Rules. As per records available both at the unit and at head office, it is noted that the unit has not surrendered the permits for cancellation nor made any entries in the concerned register. Thus it shows the unit has lifted the material against the import permits issued to them numbering 825 to 830 but evaded entries on import register with criminal intention in order to evade payment of excise duty etc. Show cause notice was issued calling upon Petitioner no.1 to show cause why action should not be taken against Petitioner no.1 for violating provisions of Excuse Act and Rules and appropriate excise duty and other fees should not be collected along with fine and penalties.

8. The Commissioner of Excise vide order dated 26th July 2011 disposed off show cause notice dated 21st June 2011 and directed Petitioner no.1 to pay amount towards excise duty, health surcharge, library cess, bottling fees on imports of 1,20,000 BL of alcohol/ENA which the unit has imported but has shown on the import register maintained by them and if IMFL was produced its excise duty, and other levies would work out to Rs.29,39,534/-. Fine of Rs.10,000/- each for violation of provisions of Section 15 and Rules 10 and 46 of Excise Act and Rules was imposed u/s.35. The total amount of fine was Rs.30,000/-. The Commissioner also imposed penalty of Rs.1,00,00,000/- u/s.35 of Excise Act and Rules since the offences committed are very serious nature. The total amount payable worked out to be Rs.1,29,69,534/-.

9. Petitioner no.1 challenged the aforesaid order by preferring appeal viz Excise Appeal No.15 of 2011 before Chief Secretary, State

of Goa. Vide order dated 3rd October 2012 the Chief Secretary dismissed Appeal No.15 of 2011 preferred by Petitioner no.1. However, penalty of Rs.One Crore imposed by Commissioner was set aside. The Petitioner was directed to pay excise duty of Rs.29,39,534/- and a fine of Rs.30,000/- and thus total amount of Rs.29,69,534/-

10. Respondent no.2 filed affidavit-in-reply to this petition. The Petitioner filed affidavit-in-rejoinder. The Respondent no.2 filed affidavit-sur-rejoinder. The Petitioner filed another affidavit about subsequent events dated 4th December 2018.

11. Petitioner no.1 applied to Respondent no.2 vide letters dated 9th May 2013 and 25th August 2015 for issuance of challans for paying fine, penalty, duty and renewal of licenses under protest subject to outcome of petition. Respondent no.2 issued necessary letters and challan accepting the proposal of Petitioner no.1 and allowing Petitioner no.1 to pay the dues and renewal of licenses thereby allowing the Petitioners to commence the activities. Vide challan dated 27th October 2015 Petitioners had paid Rs.1,19,76,191/- towards fine and excise duty in accordance with decision in Appeal No.6 of 2011. Vide challan dated 27th October 2015 Petitioners deposited amount of Rs.29,69,534/- towards fine and excise duty in accordance with decision in Appeal No.15 of 2011. Petitioners also deposited Rs.17,12,557/- towards fine and excise duty vide challan dated 27th October 2015.

12. Learned advocate for Petitioners submitted that impugned orders are required to be set aside. It is the duty of Excise Inspector to make relevant entry in the register. The fine proposed to be

imposed was not reflected in the show cause notice. The impugned order travelled beyond the scope and ambit of show cause notice dated 21st June 2011. There is no material to show that Petitioners have misappropriated six consignments of alcohol/ENA imported from Rajasthan. The findings of Respondents that 1,20,000 BL of alcohol/ENA imported from Rajasthan has disappeared from the unit of Petitioners is contrary to inspection report and panchanama prepared by Respondent no.2 on 23rd September 2010, which inspection revealed that there is excess of 1,19,949 LB of alcohol/ENA available at the stock in the Petitioners unit against entry made in the register. Respondent no.1 ought to have held that it is for the Excise Department to manage appropriate entries in the alcohol/ENA register maintained in the unit of Petitioner. The excess alcohol/ENA found during first inspection is same alcohol/ENA imported from Rajasthan vide six permits by Petitioner no.1. The order is in violation of Excise Act and Rules. Petitioners possessed export permits. Petitioners are valid permit holders. The impugned order is in breach of principles of natural justice. There was no reason to impose fine and penalty. There is no proof that alcohol has been imported within State of Goa. In the absence of such import neither any duty nor any penalty could have been imposed. In the show cause notice there was no allegation for breach of Section 15 or Rule 10 and 46 of Excise Act and Rules. In the show cause notice no case is made out that any import has been made by Petitioners in respect of alcohol/ENA. The show cause notice dated 21st June 2011 issued by Respondent no.2 does not mention about second inspection carried out by Respondent no.2. The inspection report dated 27th September 2010 has no connection with issues involved in this petition. No excisable articles can be taken out of bonded warehouse. Upon arrival of excise article at the warehouse, the same shall be tested and measured by officer in-charge of the bonded warehouse and shall be taken in to store and entered in the register. It is incumbent upon officer of Respondent no.2 who is in-charge of bonded warehouse to make entries in the register. After such arrival of the consignment, the officer of Respondent no.2 shall also certify on the importers copy of the pass issued by exporting state or union territory., full details regarding liquor received in such form. The ENA found in the unit was legally brought from Rajasthan to the Petitioners' warehouse after following due process of law and with prior permissions. The quantity of ENA imported from Rajasthan almost tally with the quantity of ENA imported from Rajasthan. The quantity of excess ENA found at the time of inspection was 1,19,949 BL and the difference was only 51 BL which could have happened due to evaporation or during loading and unloading of the same. The excess ENA found at the time of first inspection was the same ENA which was imported from Rajasthan vide permit Nos.825 to 830. There is no proof of manipulation of records by Petitioners.

13. Learned advocate for Respondents submitted that upon conducting inspection and recording quantity of alcohol/ENA/blend in several tanks of Petitioners, detailed written inspection report was prepared indicating quantity figures and observations. Number of samples of the blends taken in the presence of representatives of unit were sent to FDA for analysis. Second inspection was conducted on 27th September 2010. Inspection team comprising of Excise Inspectors and representatives of unit were present. There is no reason to interfere in the impugned orders. Petitioners in connivance with the Excise Inspector manipulated the records with malicious intentions subsequently inserted entries in the blending register

which did not correspond with figures with the bottling register. Petitioners had in connivance with Excise Inspector in-charge made dubious entries in the official records by falsely indicating release of huge quantities of ENA to the tune of 1,65,000 BL during the period from 1st September 2010 to 21st September 2010 thereby indicating that said unit was involved in clandestine operations of siphoning alcohol/ENA without having followed the due procedure of law

14. Petitioner no.1 was the holder of licenses for manufacture of IMFL, bottling of IMFL, manufacture of Wine, bottling of Wine, blending of country liquor, bottling of country liquor and private bonded warehouse. Petitioner no.2 was issued six import permits to import ENA from M/s.HSB Agro Industries Pvt.Ltd. Rajasthan Excise authorities vide their letter dated 11th May 2011 had informed that six export permits were issued to Petitioner no.1 and that Excise Commissioner, Rajasthan vide order dated 4th May 2011 and 5th May 2011 directed to verify the export ENA Rajasthan through their officers. Dispatches were made on the basis of transport passes. The register maintained by Petitioner no.1 indicated that no entry of import of alcohol/ENA have been shown pertaining to import permits numbering from 825 to 830 dated 11th August 2008 even though the unit had lifted material from M/s.HSB Agro Industries Pvt.Ltd thereby violating provisions of Section 15(i)(ii) r/w Rules 10 and 46 of Excise Act and Rules.

15. The Commissioner of Excise in its order dated 26th July 2011 had observed that records available at the unit and head office indicate that unit has not surrendered the permits for cancellation nor made any entries in the concerned register. Thus it shows that unit has lifted material against import permits issued to them

numbering 825 to 830 but evaded entries on import register with criminal intent in order to avoid payment of excise duty.

16. The Commissioner of Excise perused the record and satisfied that Petitioner no.1 has violated conditions of licenses and committed other violations and they have indulged in manipulations of records to their advantage and fraudulently and intentionally avoided the mandatory entries to be made on receipt of alcohol on their alcohol registers maintained. Thus avoiding the payments of excise duty, health surcharge, library cess fees, bottling fees etc which was due to the Government. This is supported by communication received from Rajasthan Excise Authorities. Petitioner no.1 has lifted material against import permits issued by the Department. If imports of alcohol to the tune of 1,20,000 BL was accounted in the register, its equivalent conversion to IMFL would have fetched revenue to the Government.

17. The calculation in terms of excise duty and other levies recorded by Commissioner of Excise is as follows :

"Calculation in terms of excise duty and other levies :-

Towards import of 1,20,000 BL of ENA, which could produce IMFL of 25 UP strength	= 2,67,200 BL
Wastage allowed at 2.5%	= 6,680 BL
Net Blend obtainable	= 2,60,520 BL
1. Excise duty @ Rs.10/- per BL	=Rs. 26,05,200/-
2. Health Surcharge @ 2% on excise duty	=Rs. 52,104/-
3. Library Cess @ .75% paise per BL	= Rs. 1,95,390/-
4. Bottling fee @ Rs.3/- per case of 9 BL	= Rs. 86,840/-
Total :	= Rs.29,39,534/-"

18. The Commissioner therefore calculated that there is recovery of Rs.29,39,534/- which is evaded by Petitioner no.1. The Commissioner proceeded to pass impugned order dated 26th July 2011.

19. The Chief Secretary and Appellate Authority has observed that show cause notice was issued to the Petitioner and despite giving two opportunities of personal hearings none appeared for Petitioners. The Commissioner based on the records available concluded that company imported 1,20,000 BL of ENA but did not show it as having entered into the premises. The Appellate Authority dismissed the appeal but noted that Commissioner has imposed the fine twice of Rs.30,000/- for violation of Section 15 and Rules 10 and 40 as well as another penalty of Rs.1,00,00,000/- for same sections. The Appellate Authority set aside the penalty of Rs.1,00,00,000/- imposed by Commissioner and Petitioner no.1 was directed to pay excise duty of Rs.29,39,534/- and fine of Rs.30,000/-.

20. We have perused the documents on record. Petitioners have not denied that they have taken permits from Department to import ENA from Rajasthan. The Rajasthan Government officials records available on this file, show that the Petitioners have taken export permits from the competent authority of Rajasthan. They have also taken the requisite transport passes of Rajasthan Government. The Petitioners after stating that there is no evidence for the goods having entered Goa, is not able to explain as to whether the goods have disappeared. The Petitioners seems to be under the impression that it is for the department to prove whether the goods have arrived in his premises or not. At the same time, Petitioners are not able to give any explanation as to why entries of the goods have not been

made in the register. From the documentary evidence available it can safely be concluded that Petitioners have diverted the material unauthorizedly. Hence, I feel that duty calculation and levy, cess etc. upon it for a total amount of Rs.29,39,534/- by the Excise Commissioner is appropriate. In spite of giving sufficient opportunity to the Petitioners, they did not file reply nor appear before the Commissioner.

21. It was also brought to our notice that memorandum to hold an inquiry was issued against Mr.Kamlesh Majik, Excise Inspector under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of imputations of misconduct or misbehaviour in respect of which action was sought was stipulated in the articles of charge. It is pertinent to note that charge against Mr.Kamlesh Majik in the departmental proceedings was that while he was functioning as Excise Inspector, in-charge of M/s.Tetra Queens Distilleries and Breweries (P) Limited during the period from 4th June 2008 till date connived with said M/s.Tetra Queens Distilleries and Breweries (P) Limited and allowed them to indulge into various irregularities in violation of provisions of Section 4(i), 6, 7, 8 and 15(i)(iii) of Goa Excise Duty Act and Rule 16(2)(1), 28 and 30 of Goa Excise Duty Rules, 1964. By commission or omission of his acts in allowing the aforesaid unit to indulge into various irregularities the said Kamlesh Majik failed to perform his duties faithfully, efficiently and diligently as the in-charge Inspector of the aforesaid licensee thereby causing loss of revenue to the Government Exchequer.

22. In the inspection dated 23rd September 2010 various discrepancies were found regarding physical stock in hand and stock

reflected in the register. While the total quantity of ENA reflected in the alcohol register maintained by the Petitioners was 1,47,260 BL, the total quantity of ENA actually found in physical stock of Petitioners was 2,67,209 BL. There was excess of ENA found at Petitioners distillery to the tune of 1,19,947 BL. Second Inspection was carried out on 27th September 2010. It was found that total quantity of ENA was 1,01,277 BL. It is the case of Petitioners that the excess quantity of 1,19,949 BL of ENA found on 23rd September 2010 is the same ENA imported from Rajasthan. There is no explanation about disappearance of said excess quantity of ENA at the time of second inspection on 27th September 2010. The physical stock was 1,01,277 BL. Letter was issued by Excise Authorities from State of Rajasthan to verify if ENA was exported vide six export permits and transport had reached premises of Petitioners. Thereafter show cause notice was issued to Petitioner no.1. The Petitioner no.1 was bound to account for excess quantity of 1,19,949 BL of ENA even as on second inspection dated 27th September 2010. The Petitioners avoided making entries. The quantity unaccounted was not found in physical stock. The duty has been imposed on final product.

23. In view of the above, Petitioners are not entitled for any relief as prayed in the petition. The petition is required to be dismissed.

ORDER

(i) Writ Petition No.747 of 2012 is dismissed.

(B.P.DESHPANDE, J.) **(PRAKASH D. NAIK, J.)**

MST