IN THE HIGH COURT OF BOMBAY. AT GOA
APPELLATE SIDE

WRIT PETITION NO.746 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 19th October 2010 issued by Commissioner of Excise u/s16 of Goa Excise Duty Act and Rules, 1964 (`Excise Act and Rules' for short), Order

dated 8th December 2010 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 Suktholem, Mollem, 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. 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 bend 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 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. Vide order dated 8th December 2010 the Commissioner of Excise directed Petitioner no.1 to pay amount towards Excise Duty,

Health Surcharge, Library Cess, Bottling Fee on shortages of alcohol of 45,983 BL which worked out to Rs.45,58,751/-, towards shortages of 4,21,163 BL of various blends whose Excise Duty, Health Surcharge, Library Cess and Bottling Fees which work out to Rs.74,07,440/-. The total dues recoverable being Rs.1,19,66,191/-. Fine of Rs.10,000/- each for violating the provisions of Sections 6, 7, 15 and Rule 16(2) of Excise Act and Rules which amounts to Rs.40,000/- and penalty of Rs.10,00,000/- u/s.38 of the Excise Act ad Rules since offences committed by the unit are very serious in nature. The amount was to be deposited in the Government treasury within ten days. The Commissioner also directed confiscation of liquor lying in the bonded warehouse u/s.37 of the Act. All the licenses held by Petitioner no.1 were cancelled.

7. The Petitioners challenged aforesaid order by preferring appeal No.6 of 2011 before Chief Secretary and Appellate Authority, Government of Goa. The Respondent no.2 filed affidavit-in-reply in Appeal No.6 of 2011 and affidavit/clarification dated 18th July 2011. Vide order dated 3rd October 2012 the Appellate Authority set aside the fine of Rs.10,00,000/- and confiscation of liquor u/s.37 of the Excise Act and Rules and cancellation of licenses. The duty of Rs.1,19,66,191/- was upheld. Fine of Rs.10,000/- was confirmed.

8. The Petitioners preferred application for renewal of licenses for manufacture bond vide application dated 8th October 2012. It was requested to issue challan for payment of license fee. By making payment of challans, Petitioners can take stock of raw material, stock lying in the board. The Petitioners would also challenge the order of payment of excise duty before High Court. They are manufacturing liquor having different strength. With regards to application dated

8th October 2012, the Assistant Commissioner of Excise issued Memorandum dated 12th October 2012 stating that Petitioner can pay excise duty and fine imposed as per order of Chief Secretary dated 3rd October 2012 in the appeals before issuance of challan for renewal of licenses.

9. Petitioners made representation dated 25th August 2015 to Respondent no.2 and under protest sought challans for payment of Rs.1,19,66,191/- and Rs.29,39,534/- and also sought challan for renewal of licenses. The representation of Petitioners was considered by Respondent no.2 and by communication dated 27th October 2015 Respondent no.2 had informed the Petitioners that proposal submitted by Petitioners has been approved, however, subject to the condition that Petitioners to deposit Rs,1,75,98,545/-. The Petitioners deposited Rs.1,75,98,545/- on 27th October 2015 vide challans. Respondent no.2 conducted inspection of premises on 29th October 2015. Respondent no.2 vide order dated 13th November 2015 granted permission for renewal of licenses and commencement of activities of Petitioner no.1 unit subject to certain conditions and directed the Petitioners to intimate this fact to High Court. Petitioners paid Rs.1,75,98,545/- under protest and without prejudice to the case of Petitioners in this petition.

10. Learned advocate for Petitioners submitted that the impugned order travelled beyond the scope of show cause notice. The orders dated 8th December 2010 and 3rd October 2012 are contrary to Goa Excise Act and Rules. The Respondents have not explained as to how they have calculated the excise duty. The findings of authorities are without any basis. It is alleged that there was shortage of 45,983 BL of ENA during first and second inspection. As per first inspection

report the alcohol/ENA available in the stock was 2,63,209 BL and as per second inspection report the total quantity available was 1,01,277 BL. The premises was sealed after first inspection and it was reopened by officials of Respondents on 27th September 2010. The question of tampering or pilferage from the premises does not arise. Petitioners were not responsible for pilferage. Reply to the show cause notice filed by Petitioners was ignored. Inspection was carried by Respondent no.2 on 27th September 2010. Petitioners were not in control of manufacturing unit on 23rd September 2010 since case pertaining to Petitioner no.1 and the bonded warehouse were already handed over to Excise Inspector in-charge of Petitioner no.1 unit. Respondent no.2 was in control of manufacturing unit from 22nd September 2010. Upon conclusion of inspection on 23rd September 2010 of IMFC bond room, spirit store room, bottling hall came to be locked with new locks and seals were also affixed by inspection team. During the first inspection on 23rd September 2010 as per the register maintained by Petitioners the total quantity of ENA reflected in the register was 1,47,206 BL. However, total quantity found in the manufacturing unit was 2,67,209 BL. There was excess alcohol. The excess alcohol found during the inspection was ENA imported from Rajasthan vide import permit nos.827 to 836. During the second inspection dated 27th September 2010 the total ENA available in the Petitioners' factory was 1,02,277 BL as against total quantity of ENA found on 23rd September 2010. In fact during the first inspection the total ENA found at the factory was 2,67,209 BL and the total quantity of ENA found at the second inspection was 1,01,277 BL. Petitioners were held responsible for shortage. No inquiry was conducted to find out pilferage or theft of alcohol from Petitioners' unit. No complaint was filed to investigate into the said aspect. The allegation that Petitioners had acted in connivance with the Excise Inspector in-charge who made dubious entries in the official records is not supported by any evidence. The show cause notice does not specify that Petitioners are liable to pay any duty or fine. Respondent no.2 had filed affidavit in Excise Appeal with clarification dated 18th July 2011, which makes it clear that Petitioners' representative had handed over key of the factory to Respondent no.2.

11. Learned advocate for Respondents submitted that no case is made out to interfere in the impugned orders. Petitioners have urged the disputed questions of facts. The Court should be slow in entertaining such matters. The duty is payable. Show cause notice was issued to the Petitioners. Liberty was given to the Petitioners to explain the discrepancies. The Commissioner of Excise has assigned reasons with imposing duty vide order dated 8th December 2010. The chief Secretary has adjudicated the appeal preferred by Petitioners by giving cogent reasons while passing impugned order dated 3rd October 2012. Inspection was conducted on 23rd September 2010. It was again conducted on 27th September 2010. The discrepancies were noted regarding stock. The show cause notice was issued to the Petitioners. The Commissioner issued the order dated 8th December 2010. The Chief Secretary has set aside the order imposing fine of Rs.10,00,000/-, confiscation of liquor as well as licenses and upheld the levy of duty. At the time of inspection dated 23rd September 2010 various discrepancies were found regarding physical stock in hand and stock as reflected in the liquor register. On 27th September 2010 another inspection was carried out at the Petitioners' unit. It was found that total quantity of ENA in the distillery was 1,01,277 BL as opposed to the total quantity of ENA required in the alcohol

register. The excess quantity of 1,19,149 BL of ENA which was found at the first inspection is the same ENA which was imported from Rajasthan. There was no explanation from Petitioners to the disappearance of excess quantity of ENA at the time of second inspection held on 27th September 2010. Petitioners have indulged in suppression of material and relevant facts. There were discrepancies with regard to quantity of blend. The total quantity of blend actually found at Petitioners factory was 15,570 BL, the total quantity of blend in the blending register/bottling register was 4,36,733 BL. The sample of blends drawn from blending tank no.4 on 27th September 2010 and the analytical report from FDA revealed that the contents of blend contained noxious material like Methanol equivalent to 0.16% which was highly dangerous for human consumption. The Petitioners had manipulated the records by subsequently inserting entries in the blending register. Duty has been imposed only in respect of ENA which was found in shortage. The Respondents were justified in imposing duty.

12. Inspection was conducted at the premises of Petitioner no.1 by the inspecting team on 23rd September 2010 in the presence of excise officials and representatives of unit as well as panch witnesses Pramod Naik and Rajesh Verlekar. On conducting inspection following discrepancies were noted :

> "1. The quantity of alcohol found on physical check both in the Bottling hall and in bonded warehouse was 2,67,209 bulk liters, and whereas on the register it was shown as 1,47,260 bulk liters, thereby showing excess of 1,19,949 bulk liters,
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> 2. The quantity of blend was found to be 12,980 bulk liters, however the blending register shows the quantity as 19,995 bulk liters, i.e. a shortage of 7015 BL,

> 3. Alcohol tanks were found installed in the Bottling Hall and the same were not kept under double lock system as required under Excise Duty Act & Rules, 1964 in force,
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> 4. One pouch filling machine was found installed, loaded with one pouch roll ready for use in the bottling hall permission for which was not obtained from the Commissioner of Excise as required and that the labels on pouches of `Extra Strong Red Bull Whisky' were not registered with the Excise Department nor were they applied for recording,
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> 5. The tanks installed in the Alcohol bond, bottling hall and also in the blending hall were not fitted with the reading guage."

13. Second inspection was conducted on 27th September 2010 by excise team comprising of officials, panch witnesses and representatives of unit. During the said inspection following observations were noted :-

> "1. That the total physical stock of ENA/Alcohol both in the bottling hall as well as alcohol warehouse was found to be 1,01,277 BL,
>
> 2. That the total blend on physical check was found to be 15,570 BL."

14. Although the unit was closed from 23-9-2010 as per management request and no releases of alcohol done and no production of IMFL was carried out between 23.9.2010 to 27.9.2010 the balance in stock quantity of both ENA and Blends instead of remaining unchanged, the ENA and blends quantities differed when second inspection was carried out by the inspection team on 27.9.2010 thereby indicating that the unit had pilfered with stocks of ENA and blend. On samples of ENA obtained during first inspection

carried out on 23.9.2010 from tank no.3, besides other tanks and the same submitted for analysis to FDA, it is revealed that it contained over 50% water instead of ENA. On samples of blend obtained during second inspection carried out on 27.9.2010, from tank no.BT-4, which contained 2325 BL of blend and its analysis obtained from FDA it revealed that it contained Methanol of (0.16%), which is noxious material and highly dangerous for human consumption.

15. On going through the blending register maintained by the Unit, the position was as under :

Blending Register shows a total blend as :

1. 4 Rum batches	1,32,116 BL
2. 4 Whisky bathes	1,35,077 BL
3. 3 Brandy Batches	1,03,259 BL
Total	3,70,452 BL

These blends however, though figuring on blending register were not found in physical stocks on both days of inspection i.e. 23.9.2010 and 27.9.2010, thus indicating a lear shortage of this quantity of blends (blends found on 27.9.2010 was only 15,570 BL).

16. On going through the Bottling Registers, maintained by the Unit the position was as under :

a) Register for Local :

i)	Green Label Grape Brandy	7,466 BL
ii)	Peter's Port XXX Rum	904 BL
iii)	Peter's Choice malt Whisky	7,012 BL
iv)	Peter's Nadan Malt Whisky	
v)	Curacova Napoleon French Brandy (37 U.P)	1,225 BL

b) Register for Export :

i)	Green Label Grape Brandy	15,344 BL
ii)	Peter's Port XXX Rum	12,725 BL
iii)	Peter's Choice malt Whisky	4,110 BL
iv)	Curacova Napoleon French Brandy (37 U.P)	780 BL
v)	OMR XXX Rum	15,452 BL
	Total Blend :	66,281 BL"

17. Show cause notice was issued to the Petitioners on 19th October 2010. Petitioners were called upon to show cause on various aspects reflected in the notice. The Commissioner of Excise recorded a finding that on perusal of reply to the show cause notice and records, the defense of Petitioner no.1 cannot be accepted and being satisfied that licensee had violated the conditions of licenses r/w various Circulars instructions issued by the Department besides violation of provisions of Sections 6, 7, 15 and Rule 16(2) of the Excise Act and Rules, are liable for recoveries of dues. The Commissioner was satisfied that there is clear shortage of 45,989 BL of ENA, 4,21,163 BK of various blends Out of 45,983 BL of ENA which is of shortage, total quantity of 1,18,986 BK of blend could be made. By manipulating, company fraudulently evaded the payment of duty etc.

18. The order refers to calculation in terms of excise duty which is as follows :-

a.	Towards the shortages of 45,983 BL of ENA that is equivalent to 1,18,986 BL of Blend, the excise duty and other fees works out to : Excise Duty @ Rs.36.50 per BL inclusive of Health Surcharge @ 2% on Excise Duty Library Cess @ 0.75% per BL & Bottling Fee @ Rs.3/- per 9 BL …………………. Rs.45,58,751/-
2.	Towards the shortages of various Blends : (As per Blending Register 3,70,452

	and bottling Registers + 66,281 ----------- 4,36,733 BL Deduct the quantity of blend found in the stock 15,570 BL --------------- Net Blend shortage 4,21,163 BL Deduct Wastage @ 2.5% 10,530 BL ---------------- Net Blend 4,10,633 BL Excuse Duty on] 3,08,001 BL @ Rs.10/0 per BL] 1,02,632 BL @ Rs.36.50 per BL] ----------------] 4,10,633 BL Total] ……………….. Rs.74,07,440/- Inclusive of] Health Surcharge @ 2% on] Excise Duty] Library Cess @ .75% per BL &] Bottling Fee @ Rs.3/- per 9 BL] -------------------- Total : Rs.1,19,66,191/- --------------------

19. The Commissioner concluded that there is recovery of Rs.1,19,66,199/- which the unit evaded by manipulating the facts and records. Previous record of unit shows that it is in habit of committing frauds with sole intention of avoiding payment of excise duty and other levies. After being satisfied that Petitioner no.1 had committed fraud, the Commissioner of Excise proceeded to pass order. It was directed to pay amount towards Excise Duty, Health Surcharge, Library Cess, Bottling Fee on shortages of alcohol of 45,983 BL which worked out to Rs.45,58,751/-, towards shortages of 4,21,163 BL of various blends whose Excise Duty, Health Surcharge, Library Cess and Bottling Fees which work out to Rs.74,07,440/-. The total dues recoverable being Rs.1,19,66,191/-. Fine of Rs.10,000/- each for violating the provisions of Sections 6, 7, 15 and Rule 16(2) of Excise Act and Rules which amounts to Rs.40,000/-

and penalty of Rs.10,00,000/- u/s.38 of the Excise Act ad Rules since offences committed by the unit are very serious in nature. The amount was to be deposited in the Government treasury within ten days. The Commissioner also directed confiscation of liquor lying in the bonded warehouse u/s.37 of the Act. All the licenses held by Petitioner no.1 were cancelled.

20. Petitioners preferred appeal challenging the order dated 8th October 2010 before Chief Secretary and Appellate Authority. The Respondent filed reply and stated that inspecting team examined each and every excisable material previously examined by the earlier team and recorded their measurement pertaining to each and every tank of alcohol/ENA and blend. The Respondent filed affidavit-cum-clarification stating that inspection of unit of Petitioners was in fact conducted on 23rd September 2010 from 3.15 p.m to 6.30 p.m. In every inspection it is practice of taking samples of raw material/excisable articles existing in the unit and as such the claim of Appellant that it disclosed lack of good faith on the part of Respondent is not correct. Measurements were taken in presence of representatives of Appellants. Tanks found in unit had been duly calibrated and the measurements of the contents in the tanks was done by inserting the measuring rod and noting its reading. The Excise Inspector Kamlesh Majik, in-charge of unit brought the keys of factory to the Department on 22nd September 2010 but on the same day the keys were ordered to be returned by the Commissioner of Excise to the Appellants and they were in fact returned on the same day. The Appellate Authority confirmed the excise duty imposed by Commissioner of Excise of Rs.1,19,66,191/-, however, the order imposing fine of Rs.10,00,000/-, confiscation of liquor u/s.37 and cancellation of licenses, was set aside. The fine of Rs.10,000/- was upheld.

21. There were variance between stock required in the register as well as in the physical stock available at the time of inspection. It is pertinent to note that inspection was held on 23rd September 2010 and 27th September 2010. Although Petitioners claims that premises was sealed after first inspection, record indicate that premises was not sealed. There is no mention of sealing the premises in the first inspection report. Inspection was done in the presence of panch as well as representatives of company. The report was signed by all the persons present. The second inspection report clearly mentions that after the inspection premises was sealed. There was no such reference in the first inspection report. In fact reference was made by Petitioners to the breach in the wall while answering the charge of not maintaining double lock. Excisable articles which ought to have been inside the premises were not found in the premises. The charge that there was pilferage of articles is not based on sound reasoning.

22. Petitioners had contended before Appellate Authority that at the time of inspection there was no technical person present. The readings were taken in the presence of persons and officials of Petitioners. For recording the readings presence of technical official was not required. Inspection reports indicate that representatives of company were present and they have affixed their signatures on the inspection reports. Petitioners had contended before Appellate Authority that for the presence of Methanol alcohol in the samples it cannot be taken for testing during intermediate process. Appellate Authority had observed that Department as well as company are responsible to ensure that product is safe as well as fit for human consumption. The report of FDA concludes the presence of methyl alcohol. The pouch filling machine within the premises without authorization of the Department has been examined. The Appellate

Authority observed that application was made for permission. The machinery was ordered which explains its presence within the premises. The explanation for label recording and registration can also be accepted for want of any rebuttal or lack of effective rebuttal from the Department except denying it. The Department had reasons to believe that Petitioner no.1 company is responsible for variations in stock. Presence of methyl alcohol in the blending tank no.4 and non maintenance of appropriate double locking system for the rooms in the storage tank nos.1, 2 and 3 were found to be true. The Appellate Authority therefore observed that it is appropriate to presume that Section 6 i.e. removal of excisable articles from the bonded warehouse without permission is violated.

23. It is apparent that inspection was conducted on 23rd September 2010. Various discrepancies were found regarding stock in hand and the stock reflected in the register. It was found that while the total quantity of Extra Neutral Alcohol (ENA) reflected in the register maintained by the Petitioners was 1,47,260 BL, whereas the total quantity of ENA actually found at the time of inspection was to the tune of 2,67,209 BL. There was excess ENA to the tune of 1,19,949 BL. Various other discrepancies were noted. On 27th September 2010 second inspection was conducted. It was found that total quantity of ENA found in factory was 1,01,277 BL as opposed to the total quantity of ENA as stated in register maintained by the Petitioners which was 1,47,260 BL. There was shortage of 45,983 BL. There were also discrepancies noticed with regard to quantity of blend. The total quantity of blend actually found at Petitioners factory was 15,570 BL. The total quantity of blend as stated in the blending register was 4,36,733 BL. Alcohol was found to have been stored in bottling hall and in tank nos.2 and 3 in violation of Act and

Rules. Unit had tampered with strength of Alcohol found in their possession. Unit had installed pouch filling and sealing machines without permission of Excise Department. Unit had made labels of Extra Strong Red Bull Whisky without having applied for permission, blending registers and physical check of blends showed glaring disparity, ENA found during inspections in tank no.3 contains ENA with 50% water instead of containing 62.2 O.P, sample of blends from tank no.4 on 27th September 2010 and FDA report revealed that contents of blend contained noxious material like Ethanol which is dangerous for human consumption, manipulation of entries.

24. The contentions of Petitioners are devoid of merits. We do not find any reason to interfere in impugned orders. In fact, the Appellate Authority had adopted the liberal approach and modified the order of Commissioner. The petition is devoid of merits and warrants dismissal.

ORDER

(i) Writ Petition No.746 of 2012 is dismissed.

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

MST