

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17955 OF 2024

1 M/s. Jubilant Ingrevia Ltd. A Company incorporated under the Companies Act, 2013 having its registered office at Bhartiagram, Gajraula, District : Amroha, Uttar Pradesh, India – 244223 and having its Distillery and Chemical Plant at Village Nimbut Nira, Taluka : Baramati, District : Pune	... Petitioner
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Versus

1 The State of Maharashtra Through Principal Secretary (State Excise) Mantralaya, Mumbai – 400 032. 2 The Commissioner of State Excise Maharashtra State, Rajya Utpadanshulk Bhavan, Mahapalika Marg, Mumbai – 400 001. 3 The Collector of Pune State Excise Department, District : Pune	... Respondents
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WITH

**WRIT PETITION NO. 3368 OF 2024
(Not on Board. Taken on Board)**

1 Parag Agro Foods & Allied Products Pvt. Ltd. A private Limited Company incorporated under the Companies Act, 2013 having its registered office at	
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108, 1st Floor, Waterfield House, Sprott Road,
Ballard Estate, Fort, Mumbai – 400 001 and
Distillery at Rawde Wadi, Taluka Shirur,
District : Pune

... Petitioner

Versus

1 The State of Maharashtra,
Through Principal Secretary (State Excise)
Mantralaya, Mumbai – 400 032.

2 The Commissioner of State Excise
Maharashtra State, Old Custom House,
Mumbai – 400 023.

3 The Collector of Pune
State Excise Department, District : Pune

... Respondents

Mr. Anil Anturkar, Senior Advocate a/w. Mr. Vinayak Salokhe and
Ms. Megha Jani i/b. D.B. Sawant, for Petitioner in both Petitions.

Ms. S.D. Vyas, Addl. G.P. a/w. Ms. M.S. Bane, AGP for State in
WP/17955/2024.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 03 October 2025

ORAL JUDGMENT : (Per : M. S. Sonak, J.)

1. Writ Petition No.3368 of 2024 is not on board. Taken on board.
2. Heard Mr. Anturkar, learned Senior Counsel with Mr. Salokhe,
for the Petitioners and Ms. Vyas, learned Additional G.P. with
Ms. Pooja Patil, AGP for the State.

3. On 26th September 2025, we made the following order :

“1. At the request of Ms. Vyas, we post this matter for directions/disposal on 3rd October 2025.

2. The above order is made because Mr. Anturkar has placed for our consideration at least two decisions of coordinate Division Benches striking down Rule 23 of the Maharashtra Foreign Liquor (Import & Export) Rules, 1963 which the petitioners assail in this petition.

3. He has submitted that despite the striking down of the said rule the State, continues to raise demand based on the struck down rule.

4. Ms. Vyas submits that there is no clarity about the rule having been struck down and she requires some time to obtain instruction and verify the position.

5. Accordingly, place this matter on 3rd October 2025, for direction/disposal.”

4. Accordingly, we have taken up these Petitions for final disposal at the request and with the consent of the learned Counsel appearing for the parties.

5. In Writ Petition No. 3368 of 2024, prayer clause (a) reads as follows:

(a) This Hon’ble Court be pleased to issue writ of mandamus and/or writ of certiorari or writ in the nature of mandamus and/or certiorari or any other appropriate writ or orders calling for papers and proceedings relating to the recovery of export fee under Rule 23 of the Maharashtra Foreign Liquor (Import & Export) Rules, 1963 and after scrutinizing the validity and legality thereof the said Rule to the extent of imposing export fees for issue of export passes be held ultra vires and unconstitutional and be quashed and struck down;

6. In Writ Petition No. 17955 of 2024, prayer clause (a) reads as follows:

(a) The Hon’ble Court be pleased to issue appropriate writ, orders, directions under Article 226 of the Constitution of India calling for the papers and proceedings relating to the recovery of export fee under Rule 23 of the Maharashtra Foreign Liquor (Import &

Export) Rules, 1963 for sale, export, transport & supply of Rectified spirit, ENA, power alcohol, Absolute alcohol (all of these collectively known as Industrial alcohol whether denatured or otherwise) for industrial purposes and after scrutinizing the validity and legality thereof the said Rule to the extent of imposing export fees for issue of export passes be held ultra vires and unconstitutional and be quashed and struck down;

7. In short, one of the Petition i.e. Writ Petition No. 3368 of 2024, questions the constitutional validity of Rule 23 of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963, and other, proceeds on the premise that Rule 23 is already struck down and therefore, any demand made based upon such struck down Rule would be ultra vires, unconstitutional and liable to be set aside.

8. Mr Anturkar placed for our consideration the following decisions amongst others, to contend that Rule 23 has already been struck down:-

(i) M/s. Pioneer Distilleries Ltd. Nanded Vs. The State of Maharashtra and Ors. (Coram : S.C.Dharmadhikari & Ravindra V. Ghuge, JJ.) passed in Writ Petition No. 2 of 2012 on 27 January 2014;

(ii) Sahakar Maharshi Shankkarro Mohite Patil Sahakari Sakhar Karkhana Ltd. Vs. State of Maharashtra & Ors. (Coram : Revati Mohite Dere & Dr. Neela Gokhale, JJ.) passed in Civil Writ Petition No. 2661 of 2002 on 18 July, 2025 [for short “Sahakar Maharshi (II)”].

9. Mr Anturkar submits that once the Coordinate Benches have already struck down Rule 23 of the said Rules, the Petitioners must not be forced to keep on filing repeated Petitions to once again strike down the same Rule or to seek a restraint upon the Respondents from imposing any levy under such struck down Rules. Accordingly, he submits that the Rule in both these Petitions must be made absolute in terms of prayer clauses (a) quoted above.

10. Ms. Vyas, the learned Additional GP submits that both the above decisions refer to and rely upon the decision of the Coordinate Bench in the case of *Sahakar Maharshi Shankarrao Mohite Patil Sahakari Sakhar Karkhana Ltd. Vs. State of Maharashtra & Ors.*,¹[for short “*Sahakar Maharshi (I)*”] passed by the Division Bench of P. B. Majmudar and A. A. Syed, JJ. (as His Lordships then was). Ms Vyas submits that the issue involved in *Sahakar Maharshi (I) (supra)* did not concern the constitutional validity of Section 23 of the said Rules, and therefore, the Coordinate Benches in the case of *M/S. Pioneer Distilleries Ltd. (supra)* and *Sahakar Maharshi (II) (supra)* were *per incuriam* or *sub silentio*. She submitted that the decisions relied upon by Mr Anturkar contain errors apparent on the face of the record and, in any event, were made on concession. She, therefore, submitted that no reliance would be placed upon these decisions and the Rule in these Petitions ought to be discharged.

¹ 2011(3) ALL MR 852

11. Ms Vyas elaborates to submit that in the case of *Sahakar Maharshi (I)(supra)*, in fact, upheld the legislative competence to enact the Rules, but the levy was struck down on the ground of absence of *quid pro quo*. She, therefore, submitted that *Sahakar Maharshi (I) (Supra)* was not an authority for holding that Rule 23 of the said Rules was *ultra vires* or unconstitutional. She submitted that since this point was overlooked by several later Division Bench decisions of this Court, we should not follow those decisions by holding that they were made *per incuriam* or *sub silentio*. She submitted that these are the well-known exceptions to the doctrine of *stare decisis*.

12. The rival contentions now fall for our determination.

13. In the case of *M/s. Pioneer Distilleries Ltd. (supra)*, a Coordinate Bench comprising S.C.Dharmadhikari and Ravindra V. Ghuge, JJ., in their order of 27 January 2014 held as follows:

“1. Heard both sides.

2. In the light of the Division Bench judgment of this Court, copy of which has been annexed to the Writ Petition, the Writ Petition will have to be allowed in terms of prayer clause (A). The point is squarely covered by this decision. We do not accede to the request for adjournment made by the learned AGP on the ground that the matter is pending before the Honourable Supreme Court. The Writ Petition is pending in this Court from December 2011. It was listed before the Division Bench on 30.3.2012 and notice was issued. It had not appeared on board thereafter, except at one occasion, namely, 9.5.2012.

3. In the light of the fact that the point and the issue raised is covered by the judgment of the Division Bench of this Court in the case of *Sahakar Maharshi Shankarrao Mohite Patil Sahakari Sakhar Karkhana Ltd. Vs. State of Maharashtra and others* [2011 (3) ALL MR 852], which is annexed at page 127 of the paper book (Annexure "D"), this Writ Petition is allowed in terms of prayer

clause (A). Identical relief and direction in the light of the judgment of the Division Bench in the case of *Sahakar Maharshi* (supra) shall follow.

4. There shall be no order as to costs.”

14. Similarly, in *Sahakar Maharshi (II)* (supra), another Coordinate Bench comprising Smt. Revati Mohite Dere and Dr. Neela Gokhale, JJ. in their order dated 18 July 2025, held as follows :

“1. By way of this Petition, the Petitioner assails the validity and legality of Rule 23 of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963 and quashing of the recovery of the Export Fees under the said Rules. The Petition was admitted on 30th April 2002.

2. Mr. Vinayak Salokhe, learned counsel appeared for the Petitioner and Mr. M. M. Pabale, learned AGP represented the State.

3. Mr. Salokhe has placed on record a decision of this Court dated 6th May 2011 reported in 2011 (3) ALL M.R. 852, in which an identical issue was raised and determined by this Court. The impugned Rule was set aside in the said decision. We are told that the larger issue is pending determination before the Apex Court in many such matters. Mr. Pabale also confirms the same.

4. In view of the fact that this issue is already decided in the aforesaid decision and although the issue is pending final determination in the Supreme Court, there is no stay to the orders passed by this Court in those matters, this Petition also deserves to be allowed.

5. It is however, made clear that in case, that the Supreme Court reverses the decision of this Court reported in 2011 (3) ALL M.R. 852, the Petitioner shall pay the necessary Export Fees under the Rule 23 of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963 as computed by the Competent Authority along with applicable rate of interest as computed by the said Authority. The Petitioner is directed to furnish an indemnity bond to that effect.

6. The Petition is thus, allowed. Rule is accordingly made absolute.”

15. Mr Anturkar referred to certain other orders made by the other Coordinate Benches as well, but it is not necessary to refer to

those orders because they are on the same lines as the orders quoted above.

16. Notably, both the above orders were made after the learned AGP had been heard. At that stage, no contention like the one now raised was urged. The only contention raised was that another Coordinate Bench, by its order dated 6 May 2011, *Sahakar Maharshi (I) (Supra)*, had allowed the Writ Petition and struck down Rule 23 of the said Rules and further, that the State challenged this decision before the Hon'ble Supreme Court.

17. Accordingly, the Coordinate Bench, in the case of *Sahakar Maharishi (II)(supra)*, clarified that in case the Hon'ble Supreme Court reverses the decision of this Court in *Sahakar Maharshi (I) (Supra)*, the Petitioner shall pay the necessary export fees under Rule 23 of the said Rules as computed by the Competent Authority along with applicable rate of interest. The Petitioner was also directed to furnish an indemnity bond in this regard.

18. Thus, the State was clear that Rule 23 of the said Rules had already been struck down by this Court, and in at least one instance, such striking down was challenged by the State before the Hon'ble Supreme Court. Therefore, the only contention on behalf of the State was that in case the Hon'ble Supreme Court reverses the decision of this Court in *Sahakar Maharshi (I) (Supra)*, the Petitioner shall pay the necessary export fees under Rule 23 of the said Rules.

19. After all this, it is a little strange that in these Petitions, the State should urge that the above two decisions of the Coordinate Benches, along with several other decisions of the Coordinate Benches taking the identical view, should not be followed by us because all such decisions were *per incuriam* or *sub silentio*. Such a course, with respect, does not appear to be open to the State. Moreover, since the State had contended in Writ Petition No. 2661 of 2002 that it had already challenged one such decision of the Coordinate Bench in *Sahakar Maharshi (I) (supra)*, it must now await the result of such challenge instead of urging before us that we ignore repeated decisions referred to above as being *per incuriam* or *sub-silentio*.

20. Accordingly, we cannot accept the submissions made by Ms. Vyas to the effect that we should, in these Petitions, take some view which would run counter to the several orders made by the Coordinate Benches in the context of Rule 23 of the said Rules. If the State was genuinely aggrieved by the decisions of the Coordinate Benches, it was for the State to have taken out appropriate proceedings to question those orders. Such orders cannot be questioned selectively, nor can they be challenged collaterally.

21. Further, we are rather surprised at the stance of the State Government in seeking recovery of any amounts under Rule 23 of

the said Rules after the said Rule has been struck down, and the Hon'ble Supreme Court has not set aside such decisions, nor is there any interim relief over such decisions. Once the High Court strikes down the Rule, such a declaration must benefit all concerned parties, and it cannot be restricted to any Particular Petitioner. Therefore, requiring every Petitioner to approach this Court by selectively insisting that the benefit of striking down applies only to the Petitioner who obtained such relief is something which we cannot countenance or appreciate.

22. At this stage, Ms Vyas states that this Bench should consider referring the matter to a larger Bench. Apart from the fact that no good reasons have been shown for entertaining such a request, we note that our Coordinate Bench, in the case of *Sahakar Maharishi (II) (supra)*, in its order dated 18 July 2025, has recorded a categorical submission made on behalf of the State that the decision of another Coordinate Bench of this Court in *Sahakar Maharshri (I)(Supra)* has already been challenged by the State before the Hon'ble Supreme Court. Ms Vyas now states that nothing is pending before the Hon'ble Supreme Court, or rather, the challenge pending is in relation to some different Rules. This submission runs contrary to the submission made on behalf of the State before the Coordinate Bench in the case of *Sahakar Maharshi (II)(supra)*, which was disposed of by an order dated 18 July 2025. In such circumstances, we see no good reason to accede to the

request now made by Ms Vyas.

23. For all the above reasons, we make the Rule absolute in terms of prayer clauses (a) of both these petitions, as quoted above. There shall be no order for costs.

24. All concerned are to act upon an authenticated copy of this order.

(Advait M. Sethna, J)

(M.S. Sonak, J.)

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by SONALI
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