Reserved on : 24.09.2026
Delivered on :23.10.2026

2026:AHC:221459

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 1106 of 2024

M/s United Spirits Limited

…..Petitioner(s)

Versus

State of U.P. and 5 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Ram M. Kaushik, Samiksha Chauhan
Counsel for Respondent(s)	:	C.S.C.

And

WRIT TAX No. - 1107 of 2024

M/s United Spirits Limited

…..Petitioner(s)

Versus

State of U.P. and 5 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Ram M. Kaushik, Samiksha Chauhan
Counsel for Respondent(s)	:	C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Niraj Gupta, Advocate assisted by Mrs. Anshu Gupta and Mr. Ram M. Kaushik, learned counsel for the petitioner and Mr. Manish Goel, learned Additional Advocate General assisted by Mr. Ravi Shanker

Pandey, learned Additional Chief Standing Counsel for the State-respondents.

2. The present petition has been filed seeking a writ of certorari quashing the order dated 22/24.05.2024 passed by the Joint Secretary, Excise Department-1, State of U.P., in Revision Petition No. 26(Rev.)/2019. The petitioner also seeks a writ of mandamus for refund of the amounts deducted or recovered from it on account of excess wastage for 2001-02 and 2002-03, with interest.

3. Learned counsel for the petitioner submits that the petitioner is a company that runs a distillery and bottling unit at Rosa, Shahjahanpur holding a licence in Form PD-2 for distillation of rectified spirit and a bottling licence in Form FL-3/3A under the U.P. Bottling of Indian Made Foreign Liquor Rules, 1969 (“Bottling Rules”). He further submits that the wastage alleged relates to 2001-02 and 2002-03 for which show cause notices were issued on 12.06.2003 under Rule 7(11) of the Bottling Rules, but no demand was raised until 18.02.2012, and even that order was set aside in appeal on 17.05.2012, when the duty was finally quantified at Rs. 3,67,81,469/-.

4. He further submits that Section 38-A(1) of the U.P. Excise Act, 1910 makes interest payable only where excise revenue is not paid within 3 months “from the date on which it becomes payable and quantified”. Section 3(1) defines excise revenue as revenue derived from any duty, fee, tax or fine “imposed or ordered” under the Act, so revenue arises only when the duty is imposed or ordered, and not on a mere show cause notice or on the date of wastage. The petitioner paid Rs. 3,61,00,000/- on 29.02.2012, within three months of the order of 18.02.2012, and the balance of Rs. 6,81,469/- on 16.06.2012, within three months of the order of 17.05.2012. Therefore, no default under Section 38-A is made out as such no occasion for penal interest arises.

5. The counsel for the petitioner further submits that taxation involves fixation of liability, assessment quantification, and thereafter payment/collection, if failed to pay then interest can run only after

quantification. He further submits that interest was claimed even from a date prior to the show cause notices, i.e., for 1996-97 to 2000-01. But department can claim interest only from the date of the order i.e. 23.02.2004 and not from the date of wastage.

6. He also submits that the validity of the levy on wastage above 1% is pending consideration before the Supreme Court in Civil Appeal No. 10094/2011, where the Supreme Court directed that any payments made would remain subject to final adjudication. The Revisional Authority ought not to have finally decided the interest question. Finally, he submits that the petitioner deposited Rs. 3,27,19,989/-, being 50% of the interest demand, on 11.10.2019 in compliance with the order of this Court dated 30.09.2019 in Writ Tax No. 1083 of 2019, and is entitled to its refund. Hence, the present petition.

7. In support of his submission he relies on ***Commissioner of Income Tax, Hyderabad v. Chittor Electric Supply Corporation*****, AIR 1995 SC 700**, the order of the Additional Excise Commissioner dated 31.08.1996 in ***Kisan Sahkari Chini Mills, Kaimganj Distillery*** (affirmed in revision on 28.09.1998) and ***M/s Mohan Meakin Limited v. State of U.P. and Others*****, Civil Misc. Writ Petition (Tax) No. 809 of 2012.**

8. *Per contra*, Mr. Manish Goel, learned A.A.G for the respondents submits that under Rule 7(11) of the Bottling Rules the licensee is responsible for duty on wastage above one per cent. The duty falls due at monthly stock-taking and is recoverable at the full rate. He further submits that duty became payable when the wastage occurred in 2001-02 and 2002-03. Interest charged under Section 38-A is a compensatory levy running from the date of wastage. Therefore, the petitioner cannot be permitted to retain public revenue in the meantime. He further submits that the impugned order is a reasoned order, concurrently affirms the orders of the Assistant Excise Commissioner and the Additional Excise Commissioner, and calls for no interference in writ jurisdiction.

9. After hearing learned counsel for the parties, the Court has perused the record.

10. The record shows that show cause notices dated 12.06.2003 were issued for 2001-02 and 2002-03 under Rule 7(11), proposing demands of Rs. 4,25,38,320/- and Rs. 6,39,26,520/- respectively. The petitioner replied on 28.07.2003 and sought a hearing, but no demand was raised for these two years in the letter dated 23.02.2004, which concerned 1996-97 to 2000-01 only.

11. The petitioner challenged the validity of Rule 7(11) in Writ Petition (Tax) No. 644 of 2005, which was dismissed on 14.10.2011 with liberty to approach the appropriate authority on the question of uniform rate. Petitioner approach the Apex Court through SLP (C) No. 29925/2011 was granted leave and is registered as Civil Appeal No. 10094/2011. By order dated 21.11.2011 the SC directed that any payments made would remain subject to final adjudication.

12. The Deputy Excise Commissioner, Bareilly Charge, disposed of the show cause notices for the first time by order dated 18.02.2012, imposing duty of Rs. 3,40,22,656/- for 2001-02 and Rs. 5,17,50,040/- for 2002-03. The petitioner deposited Rs. 3,61,00,000/- on 29.02.2012. In Excise Appeal No. 14 of 2012 the Excise Commissioner, by order dated 17.05.2012, set aside the order of 18.02.2012, holding that duty on excess bottling wastage is chargeable at the rate applicable to the relevant category and not at the highest rate. The duty was thereby fixed at Rs. 3,67,81,469/-, and the petitioner deposited the balance of Rs. 6,81,469/- on 16.06.2012. The order also records that no demand order had earlier been passed for these two years.

13. Only thereafter, by letters dated 05.11.2012 and 30.11.2012, penal interest of Rs. 6,54,39,977.15 was demanded, computed from 2001-02 and 2002-03. Excise Appeal No. 89 of 2012 was dismissed on 07.09.2019, with an acknowledgment that the order was subject to the outcome of Civil Appeal No. 10094/2011. The petitioner's writ petition, Writ Tax No. 1083 of 2019, was disposed of on 30.09.2019 without

going into the merits, since a revision lay, with a direction that no coercive action would be taken if 50% of the demand was deposited.

14. The petitioner deposited Rs. 3,27,19,989/- on 11.10.2019 and preferred Revision Petition No. 26 of 2019, which was dismissed by the impugned order of 22/24.05.2024. That order too acknowledged that it was subject to the outcome of the pending Civil Appeal, and was forwarded for compliance by the Assistant Excise Commissioner on 11.06.2024.

15. It is well settled that interest under a fiscal statute is payable only in the manner and from the date the statute prescribes. The valid demand must exist before default can be said to occur.

16. The issue in hand is squarely covered by the order of Division Bench of this Court in ***M/s Mohan Meakin Limited v. State of U.P. and Others*, Civil Misc. Writ Petition (Tax) No. 809 of 2012**, decided on 27.05.2016, which concerned Section 38-A of the very same Act. The relevant paragraphs are quoted hereunder:-

> *"This leads to the question as to whether excise revenue as demanded by the Excise Commissioner by its various orders issued between the year 1963 to 1973 became payable or not. The words "becomes payable" as depicted in Section 38A of the Act is of significance importance. The question that comes up for consideration is, when does the amount "becomes payable".*
>
> *According to the department, pursuant to the order of the Supreme Court, the order of the High Court was set aside as a result, the demand raised by the Excise Commissioner revived and since the demand as per the orders of the Excise Commissioner was not paid within the stipulated period interest became payable as per the second proviso to Section 38A of the Act.*
>
> *On the other hand, it was submitted by the learned Senior Counsel for the petitioner that the order of the Excise Commissioner was quashed, which was wiped out from the face of the earth. There was no demand on the basis of which any excise revenue became payable. After the order of the Supreme Court, the excise revenue became payable afresh and, within the stipulated period of 3 months, the amount was paid. It was urged that interest was only payable if the amount was not paid within three months. It was also contended that pursuant to the decision of the Supreme Court, the demand*

made by the Excise Commissioner between 1963 to 1973 did not revive automatically and that a fresh demand could only be issued, and upon failure to pay the amount within the stipulated period, penal interest could be imposed thereafter.

Having heard the learned counsel for the parties, we are of the opinion that the words "becomes payable" as stipulated under Section 38A of the Act means "legally recoverable". The excise revenue becomes payable when it is determined. Once the Supreme Court decided the issue and held the excise revenue was legally recoverable, the same was required to be paid by the petitioner. Failure to pay thereafter within the stipulated period would invite penal interest but not before. Our view is fortified by a decision of the Supreme Court in the case of ***New Delhi Municipal Committee v. Kalu Ram and another, 1976 (3) SCC 401****, wherein the Supreme Court held as under:*

> *".....Does Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 create a right to realise arrears of rent without any limitation of time? Under Section 7 the Estate Officer may order any person who is in arrears of rent 'payable' in respect of any public premises to pay the same within such time and in such instalments as he may specify in the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause way such order should not he made and, if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is 'payable.' The word 'payable' is somewhat indefinite in import and its meaning must he gathered from the context in which it occurs. 'Payable' generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time-barred. Construing the expression "any money*

> *due" in Section 186 of the Indian Companies Act, 1913 the Privy Council held in Hans Raj Gupta and others v. Official Liquidators of the Dehradun Mussorie Electric Tramway Company Ltd.(1) that this meant moneys due and recoverable in suit by the company, and observed: "it is a section which creates a special procedure for obtaining payment of moneys; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights." We are clear that the word "payable" in Section 7, in the context in which its occurs, means "legally recoverable." Admittedly a suit to recover the arrears instituted on the day the order under Section 7 was made would have been barred by limitation. The amount in question was therefore irrecoverable. This being the position, the appeal fails and is dismissed with costs."*

In view of the aforesaid, the words "becomes payable" means legally recoverable. The excise demand became legally recoverable from the date of the decision of the Supreme Court. Prior to that the demand could not be legally recoverable as it was not payable since the demand had been quashed by the High Court.

We are of the opinion that once the High Court had quashed a demand, the excise authorities did not have any authority to realize excise revenue on wastage of beer nor could the excise department could make a valid demand for payment of excise revenue on wastage of beer during the period when the judgment of the High Court ruled the roost. So long as the decision of the High Court stood, there was no valid demand for payment of excise revenue on wastage of beer. Only after the judgment of the Supreme Court, which was delivered on 23rd September, 2011 that the excise department could raise a fresh demand. No doubt, the right of the excise department to collect the excise revenue would date back to the period 1963 to 1973 but that is not the same as saying that during the said period when the law was adverse to the excise department it could still have a legitimate demand. In our opinion, till the date of the decision of the Supreme Court i.e. till 23rd September, 2011, the demand of excise duty on wastage of beer was eclipsed because of the law declared by the High Court. In our opinion, the law declared by the Supreme Court empowered the excise department to raise a demand afresh for the period 1963 to 1973. The petitioner was bound to satisfy the demand, which would arise only when a fresh and valid demand is made after the judgment passed by the Supreme Court.

The contention that the principle of merger would apply and that the demand raised by the excise department would automatically revive pursuant to the quashing of the judgment of the High Court is wholly erroneous. There is no quarrel with the decision cited by the department ***Kunhayammed and others v. State of Kerala and another, 2000 (6) SCC 359*** *on the doctrine of merger but the same has no application to the controversy involved. The judgment of the High Court merges with the judgment of the Supreme Court but the excise demand, which has been quashed cannot revive on its own. The excise demand has to be raised afresh by issuance of a fresh valid demand notice and if upon issuance of the fresh notice, the amount is not paid within the stipulated period in that event, penal interest would become payable. In the instant case, the payment was made within the stipulated period, as a result, no penal interest became payable by the petitioner.*

The decision cited by the respondents in ***Shiv Kumar and others Vs. Collector, Kanpur Nagar and others, 2005 ALJ 417 and Rampur Distillery and Chemical Co. Rampur Vs. State of U.P. and others, 2005 (1) AWC 334*** *is distinguishable and is not applicable in the instant case. In the said decisions, the demand was stayed by the High Court during the pendency of the writ petition. Upon dismissal of the writ petition, the amount became payable along with interest. The interest factor was again challenged by the petitioner. The writ Court upheld the demand for payment of interest holding that staying the recovery of tax does not prevent the running of interest.*

In this regard, the Supreme Court in ***Sri Chamundi Mopeds Ltd. Vs. Church of South India Trust Association, 1992 (3) SCC 1*** *has clearly distinguished and differentiated between a demand being stayed vis-a-vis a demand being quashed. The Supreme Court held:-*

> *"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence."*

The Supreme Court held that the effect of an interim order staying the operation of the order under challenge only makes the said order inoperative

from the date of the passing of the stay order and does not wipe out the said order from its existence. On the other hand, an order, which is quashed results in the restoration of the position as it stood on the date of the passing of the order, which had been quashed.

It was urged by the learned Standing Counsel that at the time when the writ petition was entertained, the learned counsel for the petitioner conceded that interest was payable from the date when Section 38A of the Act was enforced i.e. from the year 1985. This concession was recorded by the Court in its interim order dated 8th June, 2012. The learned Standing Counsel urged that in view of the concession given by the learned counsel for the petitioner, it was no longer for them to contend that no penal interest was payable even after 1985.

The submission of the learned Standing Counsel appears to be attractive but the same is untenable. The reasons is not far to see. In our opinion, there can be no estoppel against a statute since the statute is very clear. The period of limitation has to be adhered in accordance with the provision of the Act. The concession given by the Counsel has no effect. We are of the opinion that concession given by a Counsel cannot override the mandatory statutory provision. This view of ours is supported by a decision of the Supreme Court in ***Vijay Narayan Thatte and others Vs. State of Maharasthra and others, 2009 (9) SCC 92****.*

In the light of the aforesaid decision, it is apparently clear that when the High Court quashed the demand notice, it was wiped out from the face of the earth. Once the demand order was quashed, it was no longer in existence and, therefore, there was no valid demand for payment of excise duty during the period when the order of the High Court prevailed. It is only when the Supreme Court reversed the decision of the High Court that the excise demand became payable upon a fresh notice of demand. Penal interest becomes payable when the fresh demand is not paid within the stipulated period. In the instant case, the excise demand was paid within the stipulated period and, therefore, the question of demand of penal interest does not arise."

17. On perusal of above judgment, the Division Bench held that the words "becomes payable" in Section 38-A mean "legally recoverable", the excise revenue becomes payable when it is determined. A demand quashed by the High Court was wiped out, so no valid demand existed on which interest could run until the Supreme Court decided the matter,

thereafter a fresh demand was raised. It further held that the doctrine of merger does not revive a quashed demand on its own, the penal interest becomes payable only if the fresh demand is not paid within the stipulated period.

18. The Bench reached this view relying on ***New Delhi Municipal Committee v. Kalu Ram*** (1976) 3 SCC 401, ***Food Corporation of India v. State of Haryana*** (2000) 3 SCC 495 and ***Sri Chamundi Mopeds Ltd. v. Church of South India Trust Association*** (1992) 3 SCC 1.

19. The aforesaid view of the Division Bench in ***M/s Mohan Meakin Limited*** (supra) attained finality in the Special Leave Petition preferred against it by the revenue having been dismissed by the Hon'ble Supreme Court by order dated 04.09.2024 in Civil Appeal No. 11815/2016.

20. In the light of the above discussions, it is clear that Section 38-A(1) runs interest from the date the excise revenue is quantified and “becomes payable”, only thereafter it is not paid within three months of that date. Read with Section 3(1), which speaks of revenue “imposed or ordered”. Applying ***Mohan Meakin*** *(supra)*, excise duty on alleged excess bottling wastage becomes payable, that is legally recoverable, only when it is determined and demanded by a competent authority.

21. A show cause notice merely proposes a liability and does not create a debt. The Revisional Authority's view that interest runs from the date of wastage, irrespective of whether a demand was raised, reads the words "becomes payable" out of the statute and is contrary to ***Mohan Meakin*** (supra).

22. The record further shows that no demand for the years 2001-02 or 2002-03 existed until 18.02.2012, and the order dated 18.02.2012 was itself set aside in appeal. Consequently, the duty was finally determined only on 17.05.2012. The reasoning in ***Chittor Electric Supply Corporation*** (supra) supports this view.

23. Where an assessment is set aside and a fresh determination is made, no one can say on the date of the earlier order that any amount had already become due, and interest cannot be claimed from that earlier

date. Measured from the earliest possible date, 18.02.2012, the sum of Rs. 3,61,00,000/- was paid on 29.02.2012, within three months. Measured from 17.05.2012, the balance of Rs. 6,81,469/- was paid on 16.06.2012, again within three months. The entire principal of Rs. 3,67,81,469/- was thus paid within the period allowed by Section 38-A(1), so the condition precedent to interest, namely non-payment within three months, is not satisfied. As in ***Mohan Meakin*** (supra), where the amount is paid within the stipulated period, the question of penal interest does not arise.

24. Further, Rule 7(11)(b) contemplates a statement showing the actual wastage and the duty payable, on receipt of which the Collector recovers the duty. No such statement or demand is on record for these two years. The show cause notices of 2003 itself show that the department treated the liability as unquantified and contested. A liability that the department itself had not determined for nearly nine years cannot be treated as an arrear on which interest ran throughout that period. Nor does the refusal of interim relief by the Supreme Court assist the respondents.

25. The petitioner's plea that the Revisional Authority could not decide the interest question while Civil Appeal No. 10094/2011 is pending is not accepted, because pendency of an appeal without a stay does not bar the authorities from deciding a distinct question about the operation of Section 38-A. However, since the interest sought is consequential upon the disputed levy, this judgment does not decide the validity of Rule 7(11) or of the levy of duty above one per cent.

26. The petitioner has raised other contentions, including that Rule 7(11) is beyond the rule-making power under Section 41, the total wastage of 10% is permitted under Section 28-A(2), the manufacture is complete only after filtration, and the highest rate applied only to Scotch. These go to the validity of the principal levy, which is before the Supreme Court, and this Court expresses no opinion on them. For the same reason, the prayer for refund of the principal duty for 2001-02 and 2002-03 cannot be granted at this stage, since that duty was paid subject to the final

outcome of the Civil Appeal. The prayer for refund of the penal interest stands on a different footing than that of the refund of principal duty.

27. The petition is accordingly **partly allowed.**

28. The order dated 22/24.05.2024 passed in Revision Petition No. 26(Rev.)/2019 is hereby **quashed**.

(Piyush Agrawal,J.)

October 23, 2026
A.N. Mishra

Digitally signed by :-
AMARNATH MISHRA
High Court of Judicature at Allahabad