

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION (ST.) NO.93652 OF 2020**

New Phaltan Sugar Works  
Distillery Division Ltd. ... Petitioner  
V/s.  
State of Maharashtra and ors. ... Respondents

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Mr.V.Sridharan, Senior Advocate with Mr.Sriram Sridharan, Mr.  
C.B.Thakar, Mr.Rahul Thakar i/by M/s C.B.Thakar & Co.  
Advocates for the Petitioner.  
Ms.Neha Bhide, "B" Panel Counsel for the State.

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**CORAM : UJJAL BHUYAN &  
ABHAY AHUJA, JJ.  
DATE : OCTOBER 22, 2020**

**P.C.:-**

1. Heard Mr.Sridharan, learned senior counsel for the petitioner; and Ms.Neha Bhide, learned AGP for the respondents/State.

2. Challenge made in this writ petition is to the notice dated 30<sup>th</sup> September, 2020 issued by the Joint Commissioner of State Tax, Kolhapur Division, Kolhapur addressed to the Manager, State Bank of India, Bund Garden Branch, Pune under Section 35 of the Maharashtra Value Added Tax Act, 2002 provisionally attaching the bank account of the petitioner being Current Account No.33341172999.

3. On 14<sup>th</sup> October, 2020, this Court had issued notice on admission as well as on stay clarifying that stay prayer would be heard today.

4. Petitioner is a company engaged in the business of manufacturing and sale of Extra Neutral Alcohol and Rectified Spirit. Petitioner is a registered dealer under the Maharashtra Value Added Tax Act, 2002 as well as a registered taxable person under the Central Goods and Services Tax Act, 2017 and Maharashtra Goods and Services Tax Act, 2017. Extra Neutral Alcohol and Rectified Spirit are used for production of potable liquor i.e., by dilution to appropriate concentration; in the pharmaceutical industry; in the fragrance industry; to produce distilled vinegar etc; and for manufacture of industrial chemicals.

5. As has been argued by Mr.Sridharan, the dispute centers around taxability of Extra Neutral Alcohol (ENA) and Rectified Spirit (RS). Whether VAT should be levied or GST should be levied on ENA and RS is the core issue.

6. It is stated that ENA and RS containing 95% alcohol by volume is not fit for human consumption.

7. As per clause (12A) of Article 366 of the Constitution of India, Goods and Services Tax (GST) has been defined to mean any tax on supply of goods or services or both except taxes on the supply of alcoholic liquor for human

consumption. On the other hand, entry 54 of List-II to the 7<sup>th</sup> Schedule of the Constitution of India provides the legislative field for the States to legislate on levy of taxes on the sale of petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption but not including sale in the course of inter-state trade or commerce or sale in the course of international trade or commerce of such goods.

8. It appears that following introduction of the GST regime a confusion arose about taxability of ENA/RS-whether it should be brought within the tax net of GST or Value Added Tax (VAT) should be levied. It is stated that this matter is now before the GST Council for taking a final decision.

9. In the meanwhile, State of Maharashtra classified ENA / RS as a VAT leviable item with effect from 24<sup>th</sup> August, 2017. This was done on the assumption that ENA/RS is classified under VAT which has however been made subject to the decision of GST Council.

10. Mr.Sridharan has also referred to the opinion of the learned Attorney General of India which has been placed on record as Ex.D to the writ petition. From a perusal of the said opinion dated 23<sup>rd</sup> December, 2017, it is seen that Ministry of Finance, Government of India had sought for an opinion from the learned Attorney General on the legality of levy of GST on the supply of ENA for manufacture of alcoholic liquor for human consumption. It is also seen that learned Attorney

General had a conference with the representatives of a number of states including the State of Maharashtra. Finally, learned Attorney General opined that ENA typically contains 95% alcohol by volume and as such is not fit for human consumption. Under Article 246A(1) read with Article 366(12A), GST cannot be levied on the supply of alcoholic liquor for human consumption. ENA that is used for the manufacture of alcoholic liquor is not supplied for the purpose of human consumption as it is not consumed directly but goes through a process of manufacture. Therefore, referring to the judgment of the Supreme Court in **Bihar Distillery Vs. Union of India, (1997)2 SCC 727**, he opined that the said judgment does not denude the Center or the States the power of levying GST on ENA that is used to manufacture alcoholic liquor for human consumption.

11. Reliance has been placed on **State of UP Vs. Vam Organic Chemicals Ltd., (2004)1 SCC 225**, where the Supreme Court restated the principle reiterated in **State of UP Vs. Modi Distillery, (1995)5 SCC 753** that the State's power to levy excise duty was limited to alcoholic liquor for human consumption and that the State cannot legislate on industrial alcohol despite the fact that such industrial alcohol has the potential to be used to manufacture alcoholic liquor.

12. In paragraph 86 of the writ petition petitioner has made a statement that for the supply of ENA, GST @ 18% has been collected and deposited by the petitioner with the

respondents which has been declared in the GST returns filed. In that view of the matter petitioner has not filed VAT returns as according to the petitioner it is required to pay either of the two taxes since both the taxes are exclusionary; if you pay GST you are not required to pay VAT.

13. Referring to the impugned notice dated 30<sup>th</sup> September, 2020 he submits that though this power is available with the state taxing authority under section 35 of the Maharashtra Value Added Tax Act, 2002, the same is required to be exercised sparingly and in an extra ordinary situation when there is clear possibility of evasion of taxes which is not the case in the present petition.

14. On the other hand, learned AGP initially made a submission that learned Advocate General would like to assist the Court. However, after Mr.Sridharan made the submissions she responded by making her submissions. She has preferred to the provisions of Section 35 of the Maharashtra Value Added Tax Act, 2002, more particularly the second proviso thereto, and contends that if the petitioner furnishes a bank guarantee to protect the interest of the revenue, provisional attachment of the bank account can be stayed.

15. After hearing learned counsel for the parties and balancing the interest of both the sides, we direct as an interim measure that the impugned notice dated 30<sup>th</sup> September, 2020 provisionally attaching the bank account of

the petitioner shall be stayed subject to petitioner furnishing bank guarantee of a nationalized bank to the extent of 50% of the differential amount i.e., the difference between the amount of GST paid and the amount of VAT quantified, to respondent No.2 within three weeks from today.

16. Stand over to 3<sup>rd</sup> December, 2020 for further consideration.

17. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**(ABHAY AHUJA, J.)**

**(UJJAL BHUYAN, J.)**

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