

CASE NO.:
Appeal (civil) 8105-8107 of 2001

PETITIONER:
M/S AMRUT DISTILLERITES LTD

RESPONDENT:
SWAMI NANDAGOPALAN & ORS

DATE OF JUDGMENT: 13/02/2008

BENCH:
H.K. SEMA & MAKANDEY KATJU

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NOS. 8105-8107 OF 2001
WITH
CIVIL APPEAL NOS. 8110-8111 OF 2001 & 2185 OF 2002

We have heard the parties at length.

The questions involved for determination in this batch of appeals are (1) as to whether the manufacture of potable alcohol is vested in the State Government or the Union Government; and if so, (2) whether a license is required under Section 11 of the Industries (Development and Regulation) Act, 1951, for manufacture of potable alcohol.

The Division Bench of the High Court followed the judgment rendered by a Constitution Bench of this Court in Synthetic & Chemicals Ltd. & Others Vs. State of U.P. & Others (1990 1 SCC 109) and held that for the manufacture of potable alcohol an additional license under Section 11 of the Act would also be required. While saying so, the Division Bench of the High Court relied on a sentence that has crept in to paragraph 85 of the aforesaid decision of this Court through

inadvertence or clerical error in the judgment. The sentence read as "Thereafter, licences to manufacture both potable and non-potable alcohol is vested in the Central Government". Obviously the aforesaid sentence crept in paragraph 85 of the judgment through inadvertence or clerical error. We say so because under the Constitutional scheme regulation of manufacture and sale etc. of potable alcohol is vested with the State Government, whereas the regulation of manufacture and sale etc. of Industrial alcohol is vested with the Union of India.

The aforesaid sentence in paragraph 85 of the Constitution Bench in Synthetic's case (supra) has been noticed by the Division Bench of this Court in para 11 of Bihar Distillery and Another Vs. Union of India & Others [1997 (2) SCC 727]. After noticing the sentence appearing in paragraph 85 of the Constitution Bench judgment, this Court clarified in paragraph 12 of the Bihar Distillery's judgment (supra) as under:

"It is obvious that the words "both potable and" occur here as a result of some accidental or typographical error. The entire preceding discussion in the judgment repeatedly affirms that so far as potable alcohols are concerned, they are governed by Entry 8 and are within the exclusive domain of the States. The aforesaid words cannot fit in with the said repeatedly affirmed reasoning. We are, therefore, of the opinion that the said passage cannot be understood as holding that even in respect of the industries engaged in the manufacture or production of potable liquors, the control is vested in the union by virtue of Item 26 of the First Schedule to the IDR Act. In view of the express language of Entry 8 \026 as has been clearly explained in McDowell \026 so far as potable liquors are concerned, their manufacture, production, possession, transport, purchase and sale is within the exclusive domain of the States and the Union of India has no say in the matter. For a similar clarification with respect to the power of the State to levy sales tax on industrial alcohol, reference may be had to State of U.P. Vs. Synthetics and Chemicals Ltd.'

In our view, the aforesaid sentence crept in in paragraph 85 of the Constitution Bench judgment in Synthetic's case (supra) was clearly due to a clerical error which has been rightly clarified by the subsequent judgment in

Bihar Distillery's case (supra).

We also noticed the High Court's reference to Article 47 of the Constitution which is a Directive Principle of State Policy and hence not enforceable.

In that view of the matter, the Division Bench of the High Court fell in error in following the sentence which crept in inadvertently in paragraph 85 of the Synthetic's case (supra) judgment.

In the result, the appeals are allowed. The judgment of the Division Bench of the High Court is set aside. The matter is remitted to the High Court to consider the matter afresh in terms of the judgment rendered by this Court in Bihar Distillery's case.

The High Court may consider making Union of India as party respondent.

JUDIS