PETITIONER:
SHREE KRISHNA GYANODAY SUGAR LTD.M/S ARUN CHEMICAL INDUSTRIE

Vs.

RESPONDENT:
STATE OF BIHAR & OTHERS

DATE OF JUDGMENT: 14/08/1996

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
BHARUCHA S.P. (J)

CITATION:
JT 1996 (7) 322 1996 SCALE (6)17

ACT:

HEADNOTE:

JUDGMENT:

WITH

CIVIL APPEAL NO.4764 OF 1996

J U D G M E N T

S.B. Majmudar, J.

These civil appeals, arising out of special leave to appeal granted against a common judgment rendered by a Division Bench of the Patna High Court in three writ petitions moved by the appellants, raise a common question as to whether Rule 9 of the Bihar & Orissa Excise Rules, 1919 (hereinafter referred to as 'the Rules') framed under Bihar Excise Act, 1915 (hereinafter referred to as 'the Act') is ultra vires the provisions of the said Act and in the alternative whether the said rule covers appellants' distilleries which are manufacturing not only denatured spirit but also potable liquor. The appellants' aforesaid twin contentions have been repelled by the High Court and that is how they are before us in these appeals.

Introductory facts

A few relevant facts leading to these proceedings may be noted at this stage. Appellant in Civil Appeal Nos.4762-63 of 1996 is the licencee in respect of two distilleries, one situated at Lauriya and another at Mirganj in the districts of West Champaran and Gopalganj respectively in Bihar State. It has been granted licences by the State of Bihar under the Act. The appellant's distilleries are manufacturing liquor on the basis of licences granted in Form No.19 for compounding and blending foreign liquor; in Form No.19-A for manufacture of sacramental wine or alter wine or mass wine containing not more than 42% of proof spirit; in Form No.25 for the manufacture of denatured spirit; in Form No.27 for wholesale country spirit; in Form No.28 for manufacture of spirit in a distillery issued to the grantee of the exclusive privilege of supply of country spirit under Section 22 of the Act; and licence issued in Form No.28-A for manufacture of spirit in distillery for use in the manufacture of chemical, and for industrial,

scientific and other purposes. The licences in Form Nos.27 and 28 were withdrawn with effect from 1st April 1979. The Superintendent of Excise directed the appellant to pay a sum of Rs.1,68,128.77 towards the establishment charges said to have been incurred over the excise staff posted at the Lauriya distillery from March 1973 till July 1979 and at Mirganj distillery for the years 1975-76 to 1978-79. The said demand was raised as per impugned Rule 9 of the Rules. That led to two writ petitions moved by the appellant before the High Court.

Appellant in Civil Appeal No.4764 of 1996 challenged in its writ petition before the High Court, an order dated 27th December 1979 passed by the Member, Board of Revenue, an order dated 27th September 1978 passed by the Commissioner of Excise and the demand made by Superintendent of Excise, Bhagalpur contained in Memorandum dated 5th November 1976. The said appellant has a distillery in Sultanganj in the district of Bhagalpur in Bihar State. It manufactures country spirit and holds licences in Form Nos.25, 27, 28 and 28-A. However, licences granted to it in Form Nos.27 and 28 were withdrawn with effect from 1st April 1979.

Both the appellants contended before the High Court that their distilleries were having composite licenses to manufacture not only denatured spirit and other spirit for industrial use but were also manufacturing potable spirit or country liquor and that for these distilleries the respondent-authorities had no power or jurisdiction to invoke Rule 9 of the Rules demanding establishment cost and cost of officers who were posted at these distilleries for the purpose of supervision. Their main contention was also to the effect that Rule 9 being ultra vires the provisions of the Act, the aforesaid demand of the respondents was unauthorised.

As noted earlier both these contentions were rejected by the High Court after hearing the concerned parties. The High Court took the view that Rule 9 of the Rules was not ultra vires the provisions of the Act. So far as the alterative contention was concerned it was noted by the High Court but it appears that no clear finding was rendered by the High Court thereon. However, ultimately all the writ petitions were dismissed leading to the present proceedings before this Court.

Rival contentions

Learned counsel appearing for the appellants submitted that Rule 9 of the Rules was beyond the scope of the Act and there was no statutory provision in the said Act to sustain such a rule. It was alternatively contended that as the appellants' distilleries were having licence to manufacture liquor which was not only comprising of denatured spirit or other type of industrial spirit but also potable liquor. Rule 9 on its express language could not be pressed in service against the appellants' distilleries.

On the other hand Shri Sanyal, learned senior counsel appearing for the respondents, submitted that impugned Rule 9 of the Rules was clearly sustainable under Section 38 of the Act and it was enacted with a view to seeing that the denatured spirit manufactured by the appellants' distilleries was not illegally converted into potable liquor especially when such an activity itself would invoke the penalty provisions of Section 49 of the Act. Consequently with a view to subserving the public purpose and with a view to seeing that the society does not suffer by such illegal activities on the part of the distilleries, Rule 9 was enacted for fructifying the purposes of the Act and could not be said to be de hors its provisions entitling the State

authorities to regulate and supervise the working of these distilleries. On the alternative contention it was submitted by Shri Sanyal, learned senior counsel for the respondents, that Rule 9 as framed entitled the Commissioner to impose costs on the concerned distillery which was manufacturing denatured spirit or any other commercial spirit which would include even potable spirit which was sold in the market and, therefore, had commercial characteristics. Shri Sanyal also submitted that the words, 'denatured spirit or any other commercial spirit' as found in the second part of the impugned rule could be read as 'denatured spirit and any other commercial spirit' and if so read they would include even potable spirit manufactured by the distilleries for commercial purposes, namely, for selling them at a price and for earning profit by the said exercise. That consequently according to Shri Sanyal the distilleries run by the appellants were squarely covered by the sweep of Rule 9 of the Rules and hence the High Court was justified in dismissing the writ petitions.

Points for determination

In view of the aforesaid rival contentions the following points arise for our determination:

1. Whether Rule 9 of the Rules is ultra vires the provisions of the Act?
2. In the alternative whether the second part of Rule 9 imposing establishment costs on the distilleries, on its express language, applies to the distilleries run by the appellants for manufacturing not only denatured spirit and spirit for industrial use but also for manufacturing potable liquor for human consumption?

We shall deal with the points seriatim.

Point No.1

The Act enacted in 1915 pertains to import, export, transport, manufacture, possession and sale of certain kinds of liquor and intoxicating drugs in the then provinces of Bihar and Orissa. Section 2 which is a dictionary clause defines 'Board' as per clause (2) to mean 'Board of Revenue'. 'Excisable article' as per clause (6) means, '(a) any alcoholic liquor for human consumption; or (b) any intoxicating drug. Clause (6a) of Section 2 refers to 'excise duty' and 'countervailing duty' which mean, 'any such excise duty or countervailing duty, as the case may be, as is mentioned in entry 51 of List II in the Seventh Schedule to the Constitution'. Section 2(12a) defines, 'intoxicant' to mean, '(i) any liquor, or (ii) any substance from which liquor may be distilled and which is declared by the State Government by notification in the official Gazette to be an intoxicant for the purpose of this Act, or (iii) intoxicating drug, or (iv) medicinal preparation as defined under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955'. The term 'liquor' is defined by Section 2(14) to include all liquids consisting of or containing alcohol, such as spirits of wine, spirit, wine, fermented tari, pachwai and beer, and also unfermented tari, and also any other substance which the State Government may, by notification, declare to be liquor for the purposes of this Act. The term 'spirit' is defined by clause (19) of Section 2 to mean, 'any liquor containing alcohol obtained by

distillation, whether it is denatured or not'. The term 'to denature' is defined by clause 5(b) to mean 'to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under clause (3) of section 90, and "denatured spirit" means spirit so mixed'. Section 13 deals with 'licence required for manufacturing intoxicants'. Section 15 deals with 'establishment of distilleries, breweries or warehouses'. It lays down that the Excise Commissioner may subject to any restrictions imposed by the State Government, establish, or authorise the establishment of, distilleries or breweries, in which liquor may be manufactured under a license granted under section 13. Thus under a licence granted under Section 13 a distillery can manufacture liquor which would include not only potable liquor but even denatured spirit or spirit for industrial use which is not potable. Section 22 deals with 'grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs or denatured spirit or any other intoxicants'. It is the case of the appellants that they have not got any such exclusive privilege under the aforesaid Section to manufacture country made liquor or intoxicating drugs or denatured spirit. Section 27 deals with 'power to impose duty on import, export, transport and manufacture of any excisable article'. It is not the case of either side that Rule 9 seeks to impose any excise duty or a countervailing duty. The Section which is relevant for our purpose is Section 38 which reads as under:

> "38. Fees for terms, conditions, and form of, and duration of, licences, permits and passes. - (1) Every licence, permit o pass granted under this Act-
> (a) shall be granted -
> (i) on payment of such fees (if any), and
> (ii) subject to such restrictions and on such conditions, and
> (b) shall be in such form and contain such particulars, as the Board may direct.
> (2) Every licence, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rule made by the State Government under section 89, clause (e)."

A conjoint reading of Section 38 sub-Section (1)(a)(ii) and Sections 15 and 13 of the Act leaves no room for doubt that licences issued to the appellants' distilleries governed by the Act can be made subject to such restrictions and conditions as the Board of Revenue may direct. Section 90 of the Act empowers the Board to make rules for regulating the manufacture, supply or storage of any intoxicant and in particular, and without prejudice to the generality of the provision, the Board is also authorised to make rules for regulating the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any intoxicant, and the provision and maintenance of fittings, implements and apparatus therein. As per sub-Section (9) of Section 90 the Board can also prescribe restrictions under which or the conditions on which any licence, permit or pass may be granted, and in particular, and without prejudice to the generality of this provision, may make rules for (i) prohibiting the admixture with any intoxicant or any article

deemed to be noxious or objectionable, (ii) regulating or prohibiting the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength, (iii) prescribing the nature and regulating the arrangement of the premises in which any intoxicant may be sold, and prescribing the notices to be exposed at such premises. It is in exercise of the aforesaid rule making powers available to the Board of Revenue under Section 90 that the impugned Rule, amongst other rules, came to be enacted. It is pertinent to note that Bihar and Orissa Excise Rules of 1919 as initially framed contained Rule 9 which read as under :

> "The Commissioner shall appoint such officers and establishment as he thinks fit to the charge of a distillery."

It was only on 23rd August 1930 that the concept of establishment cost to be borne by the distilleries concerned got engrafted in the said Rule by way of second part. The ruled consisting of both these parts is as under :

> "9. The Commissioner shall appoint such officers and establishment as he thinks fit to the charge of a distillery.
>
> In the case of a distiller licensed solely for the purpose of the manufacture of denatured spirit or any other commercial spirit, the distiller shall bear the whole cost including leave and pension contributions and cost of uniform of such excise staff and establishment as may be considered necessary by the Excise Commissioner for proper supervision."

The appellants contend that said impugned Rule 9 cannot trace its origin to any of the statutory provisions of the Act. It is difficult to agree with this contention. The aforesaid statutory provisions clearly indicate that the authorities functioning under the Act can supervise and regulate the working of the distilleries which are licensees under the Act. Power to regulate and supervise these distilleries as engrafted in the first part of Rule 9 and also to levy establishment cost from these distilleries under second part of the Rule can squarely be traced to the statutory provisions of Section 38(1)(a)(ii) which entitle the Board to impose suitable restrictions and conditions on the licencees like appellants' distilleries who have to manufacture liquor pursuant to such licences subject to such restrictions and conditions as are imposed on them. Section 38 sub-section (1)(a)(ii) read with Section 90 sub-Section (1)(a) and sub-Section 9(i) and (ii) represents a well-knit statutory scheme authorising the Board to promulgate rules for laying down restrictions and conditions on the licensees, namely, the distilleries which could be validly subjected to such restrictions on their manufacturing activities before they get clearance for such activities under Section 15 read with Section 13 of the Act. It is, therefore, not possible to agree with the contention of the learned counsel for the appellants that Rule 9 is ultra vires the provisions of the Act or has no statutory coverage for its existence. It has to be kept in view that if a distillery which manufactures denatured spirit attempts to alter or alters any denatured spirit with the intention that

such spirit may be used for human consumption whether as a beverage or internally as a medicine would be committing an offence which is punishable under Section 49 of the Act. It is, therefore, permissible for the excise authorities under the Act to supervise the working of such distilleries so that they may not commit such offence sand to oversee their manufacturing activities. It is axiomatic to state that prevention is better than cure. If denatured spirit is illegally altered and made fit for human consumption, it is likely to have devastating effect on the health of consumers and may even result in fatal consequences or loss of vision and other pernicious physical handicaps. In order to prevent such social calamities, if supervision is provided at the cost of distilleries, it cannot be said that such conditions are not germane to the requirements of the Act or do not flow from the statutory scheme envisaged by the Act. If for this laudable purpose an establishment is put up at the doorsteps of the distilleries themselves as per the impugned rule and if cost of maintenance of such establishment is foisted on the licensee distilleries it cannot be said that such a rule is de hors the provisions of the Act. On the contrary such a provision squarely falls within the regulatory powers of the Board for framing rules with a view to seeing that the provisions of the Act are not stifled or tinkered with by such licencee distilleries.

Reliance placed by learned counsel for the appellants on a Constitution Bench judgment of this Court in Indian Mica Micanite Industries v. The State of Bihar and others 1971 (2) SCC 236 also cannot be of any avail as in that case this Court was concerned with the question whether the appellant who was a consumer of denatured spirit could be subject to a levy by way of fee under Rule 111 of the Rules framed under Section 90 of the Act. In paragraph 17 of the Report the Constitution Bench considered the nature of the service rendered by the Government to the appellant, namely, consumer of denatured spirit. It was observed in the said paragraph that so far as the manufacturing process was concerned, the appellant or other similar licensees had nothing to do with it. They were only the purchasers of manufactured denatured spirit. Hence the cost of supervising the manufacturing process or any assistance rendered to the manufacturers could not be recovered from the consumers like the appellant. Further under Rule 9 of the Board's rules, the actual cost of supervision of the manufacturing process by the Excise Department was required to be borne by the manufacturer. There could not be a double levy in that regard. In this connection, it was observed that the State was not rendering any service to the consumer of denatured spirit when it was maintaining its own staff for regulating the manufacturing process of such spirit. We fail to appreciate how this decision can be of any assistance to the learned counsel for the appellants for the simple reason that in this very judgment Rule 9 of the Board's Rules which is impugned before us was referred to as a rule which was operative qua manufacturers of spirit. It was only Rule 111 which was on the anvil of scrutiny and in connection with the said Rule it was held that because the State was not rendering any special service to the consumer of denatured spirit the impugned levy under Rule 111 was not justified. Such is not the case before us. It is also pertinent to note that even though constitutional validity of Rule 9 was not challenged in the aforesaid case it was noted by the Court that the said Rule justifiably sought to recover actual cost of supervision of the manufacturing process by the Excise Department from the manufacturer distillery. Learned counsel

for the appellants then placed for our consideration decision of another Constitution Bench of this Court in Synthetics and Chemicals Ltd. and others v. State of U.P. and others (1990) 1 SCC 109. In that case this Court was concerned with the constitutional validity of the levy by way of vend fee imposed by the respondent-State on industrial alcohol. It was held that such imposition by the State was beyond the legislative powers conferred on the States concerned by any of the entries in List II or III of the Constitution of India. Reliance was placed on the observations in paragraph 86 of the Report wherein by way of sub-para (d) it was observed.

> "However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo. See in this connection, the observations of Indian Mica case.

Even these observations cannot be of any assistance to the appellants for supporting their contention that impugned Rule 9 is de hors the provisions of the Act.

On the other had learned senior counsel Shri Sanyal for the respondents heavily leaned on two decisions of this Court in M/s Gujchem Distilleries India Ltd. v. State of Gujarat and another (1992) 2 SCC 399 and Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. v. State of Gujarat and another (1992) 2 SCC 42 wherein this Court has taken the view that levy of supervisory charges from manufactures of industrial alcohol by a manufacturer in its own distillery governed by the provisions of Bombay Prohibition Act, 1949 was perfectly valid. Learned counsel for the appellants, however. contended that the aforesaid two decisions were based on the express language of Section 58-A in the Bombay Prohibition Act, 1949 empowering the State Government by general or special order to direct that the manufacture, import, export, transport, storage, sale, purchase, use, collection or cultivation of any intoxicant, denatured spirituous preparations, hemp, Mhowra flowers, or molasses shall be under the supervision of such Prohibition and Excise or police Staff as it may deem proper to appoint, and that the cost of such staff shall be paid to the State Government by person manufacturing, importing, transporting, storing, selling, purchasing, using, collecting or cultivating the intoxicant, denatured spirituous preparation, hemp, Mhowra flowers or molasses. To that extent learned counsel for the appellants is right. However, in the present Act with which we are concerned even though there is no such express provision like Section 58-A of the Bombay Prohibition Act, 1949 there is sufficient statutory provision in that behalf in the shape of Section 38(1)(a)(ii) road with the relevant clauses of Section 90 noted by us earlier. It cannot, therefore, be said that the impugned Rule 9 is ultra vires the provisions of the Act. The High Court was, therefore, justified in rejecting the said challenge. Point No.1 is accordingly answered int eh negative.

Point No.2

This takes us to the consideration of Point No.2. So far as the contention concerning this point goes, even though it was noted by the High Court in para 39 of the impugned common judgment that the principal question which arises for consideration is as to whether the Commissioner has the power to appoint an officer and create an establishment to the charge of distilleries only in a case

where a licence has been granted solely for the purpose of manufacture of denatured spirit or any other commercial spirit and even though it observed that the words 'commercial spirits' have not been defined under the said Act and the said words have, therefore, to be given their ordinary meaning, the High Court has not dilated further on this aspect. Nor has it pronounced upon the alternative contention whether said Rule 9 on its express language can apply to the distilleries run by the appellants.

In this connection learned counsel for the appellants vehemently contended that it is not in dispute between the parties that the appellants are having licences under Section 15 read with Section 13 not only to run distilleries for manufacturing denatured spirit or other industrial alcohol but also have licences to manufacture potable liquor, including country made liquor. In this connection reliance was placed on averments made in paragraph 2(b) of the Special Leave Petition which stated that the Hon'ble High Court on an incorrect premise that "commercial spirit" included all kinds of spirits including the one fit for human consumption (potable spirit) concluded that the petitioner's distillery, even though it manufactured denatured and/or commercial spirit only to the extent of about 10% of its total production, was liable to pay the establishment charges. So far as this averment is concerned in the counter affidavit on behalf of respondent no.1 has been stated in paragraph 4 as under :

> "4. In reply to para 2(a) and (b) I say that it is stated that the Distillery petitioner is bound to pay the costs of establishment including costs of leave and pension, contribution and uniform of staff posted by the Excise Commissioner for proper supervision, according to Rule 9 notified by Board's Notification No.23-137-2 dated 29th April, 1919. he petitioner Distillery is holding excise licence in Form 25 and 28A. The Licence Form 25 is licence for manufacture of Denatured Spirit and licence Form 28A is a License for manufacture of spirit for use in chemicals, industrial, scientific and other purposes. Section 2(5) of Bihar Excise Act, 1915 (Act II of 1915) defines "to denature" as meaning to mix spirit with one or more denaturants in such a manner as may be prescribed by Rule made in this behalf under clause (3) of Section 90 and denatured spirit means spirit so mixed.
>
> The commercial spirit is not defined in Excise Act. So it will have a liberal meaning i.e. spirit for use of commercial purposes. Petitioner licencee has got license under Excise Act for manufacture of spirit for commercial purposes including denatured spirit and is, therefore, undoubtedly liable to pay the establishment costs as per Rule 9 framed by Board in exercise

of powers conferred under Section 90 of the Act."

It, therefore, becomes clear that the averment that appellants' distilleries manufacture, amongst others, potable spirit to the extent of 90% of its total production as compared to 10% of its production of denatured spirit or commercial spirit is not controverted at all. Even that apart in paragraph 2 of the judgment of the High Court it has been stated as a fact that the appellant in Civil Appeal Nos. 4763-63 of 1996 was having licence for compounding and blending foreign liquor amongst others. Similarly in paragraph 9 of the judgment in appeal it has been noted that so far as the appellant in Civil Appeal No.4764 of 1996 is concerned its distillery at Sultanganj was having licence for manufacture of country spirit in Forms 25, 27, 28 and 28-A. We must, therefore, proceed on the basis of undisputed factual position on record of these cases that the concerned distilleries of the appellants were having licences for manufacturing not only denatured spirit or spirit which could be used for industrial purposes but were also having licences for manufacturing potable liquor. In the background o this well established factual position we have to consider the alternative contention canvassed by learned counsel for the appellants. We have already extracted Rule 9 earlier. The first part of the Rule prior to its amendment by which second part got added to it, authorised the Commissioner to appoint such officers and establishment as he thinks fit to the charge of a distillery. The words 'to the charge of a distillery' were interpreted by the High Court to mean, 'at cost of the distiller'. This interpretation was strongly relied upon by learned senior counsel Shri Sanyal for the respondents. In our view the said interpretation cannot be countenanced. The first part of Rule 9 contemplates appointment of officers and establishment as thought fit by the Commissioner with a view to taking charge of the distillery for supervisory purposes. The context in which the said phraseology was employed by the rule making authority leaves no room for doubt that the words 'to the charge of a distillery' were meant to empower such officers and establishment contemplated by Rule 9 to be in charge or control of distillery for the purposes of supervision. The term 'charge' can obviously not mean the 'cost' of the distillery as the aspect of cost of such establishment and officers was taken care of by the rule making authority by enacting the second part of the Rule. If the term 'charge' included the cost of such officers and establishment there would have been no need to enact the second part of the Rule later on for imposing such costs on the concerned distilleries. Even that apart if we see the first part of Rule 9 which employs the words 'to the charge of a distillery' in the context of succeeding rules especially Rule 10 which deals with the duty of the distiller to provide suitable quarters for the officer-in-charge and other establishment, Rule 11 which enjoins the officers in charge of the distillery in case of fire or accident to immediately attend to the same, Rule 15 which requires the distiller to keep accounts which should be made open at all times for inspection by the Excise Officer in charge and also Rules 16 and 17 which deal with the authority and power of Excise Officer in charge, no doubt is left that the rule making authority contemplated the concerned officers and establishment to be put in charge of the distillery when it employed the words 'to the charge of a distillery' in the first part of the Rule which got enacted simultaneously with the succeeding rules, that is, Rule 10 onwards as noted by

us above. An officer cannot take charge of the distillery unless he is put in charge of such distillery in exercise of powers of the Commissioner under Rule 9, first part.

Now we come to the consideration of the moot question whether the second part of Rule 9 which is the main provision which is impugned in the present proceedings can apply to distilleries run by the appellants which are having multiple licences to manufacture not only denatured spirit or other industrial spirits but also potable spirits or liquor fit for human consumption. The answer to this moot question has to be found from the express wording employed by the rule making authority in the second part of the said rule. Before the said part can be pressed in service against any distillery the following conditions must be shown to have existed in connection with such a distillery :

1. The concerned distillery must have licence for the purpose of manufacturing denatured spirit or any other commercial spirit.
2. Such a licence must be solely for the aforesaid purpose and for no other purpose.

If those two conditions are satisfied then only the whole cost of such officers and establishment can by required to be borne by such distillery. It is obvious that the distilleries run by the appellants which are made to defray the cost of officers and establishment under Rule 9 are not distilleries which are manufacturing only denatured spirit or any other commercial spirit nor are they having licences solely for the purpose. Shri Sanyal, learned senior counsel for the respondents submitted that the words 'any other commercial spirits' would include even potable spirit or liquor fit for human consumption as it has also commercial value and can be sold in the market. He further submitted that the word 'or' found in between the terms 'denatured spirit' and 'any other commercial spirit' may be read as 'and' and when so read it can be held that second part of Rule 9 can apply to even those distilleries which have licences for manufacturing denatured spirit and also other commercial spirits including potable liquor. It is not possible to agree with this contention for the simple reason that such a contention would ignore the term 'solely' employed by the rule making authority in its wisdom in the second part of Rule 9. It has to be held that before it can be applied to any distillery it must be shown that such distillery is licensed solely or wholly to manufacture either denatured spirit or any other commercial spirit. If the word 'or' is read as 'or' then it must be shown by the respondent that the appellants' distilleries are having licences for either solely and wholly manufacturing denatured spirit or are having licences for solely and wholly manufacturing any other commercial spirit which may be even assumed to include potable liquor. If a distillery has the licence to manufacture denatured spirit and also a licence to manufacture any other commercial spirit, it cannot be said to be having a licence solely for the manufacture of either of these two types of spirits. On the express language of the rule, distilleries having multiple licences get excluded from its sweep. On the facts of the present case, we have seen that the appellant's distilleries are having multiple licences. None of the distilleries of the appellants are having licence solely to manufacture denatured spirit or only to manufacture potable liquor even assuming that it is cover by the term 'commercial spirit'.

Having realised this difficulty Shri Sanyal, learned senior counsel for respondents submitted that the word 'or' may be interpreted as 'and'. Even if the said submission is

accepted it would not advance the case of the respondents for the simple reason that the words 'denatured spirit and any other commercial spirit' if read as suggested by Shri Sanyal will result in the succeeding words 'any other commercial spirit' getting colour from the proceeding words 'denatured spirit' meaning thereby any other commercial spirit contemplated by the said phrase must fall in the same category or class as denatured spirit which precedes the class of such residuary commercial spirit as the succeeding words refer to 'any other commercial spirit' meaning thereby commercial spirits other than denatured spirits. Consequently if the word 'or' is read as 'and' any other commercial spirit would fall in the same category as denatured spirit meaning thereby those spirits which are not fit for human consumption. They would not cover potable spirits even assuming that they are commercial spirits as contended by Shri Sanyal. However, in our view other commercial spirits as contemplated by the Rule are those spirits which are unfit for human consumption and they do not cover potable liquor which cannot fall in line with denatured spirit. In the context of denatured spirit as mentioned in the Rule the succeeding words, 'or any other commercial spirit' must mean those spirits which fall in the category of spirits unfit for human consumption like denatured spirits. In other words the term 'other commercial spirits' would take in its sweep only those spirits which are used for industrial purposes or any other purpose other than for human consumption. Consequently reading the word 'or' as 'or' or even reading it as 'and' the appellants' distilleries which are having multiple licences to manufacture not only denatured spirit or other industrial spirit but also potable liquor would get out of the sweep of the second part of Rule 9. On the express language of Rule 9, second part, the alternative contention canvassed by the learned counsel for appellants has got to be accepted. It must, therefore, be held that second part of Rule 9 will apply to only those distilleries which are licensed solely and wholly for the purpose of manufacturing either denatured spirit or any other commercial spirit unfit for human consumption but would not include those distilleries which are licensed for manufacturing along with denatured spirit or other industrial spirits unfit for human consumption, also potable liquor which is fit for human consumption. As the appellants' distilleries are not having such sole and only licences for manufacturing denatured spirit or other commercial spirit unfit for human consumption but are also having composite and multiple licences to manufacture potable liquor which obviously yields large revenue to the State by way of excise duties, they are outside the sweep of second part of Rule 9. It is obvious that to such distilleries the first part of the Rule may apply wherein the State will have to bear the cost of providing supervisors and establishments for that purpose but the cost of such establishment cannot be foisted on such distilleries. Point No.2 is, therefore, answered in the negative.

In the result the appeals partly succeed. The common judgment under appeal is set aside. The writ petitions filed by the appellants in the High Court will stand allowed in part by holding that even though Rule 9 is intra vires the provisions of the Act the second part of Rule 9 regarding foisting of establishments costs on the appellants' distilleries does not cover these distilleries. However, it is clarified that first part of Rule 9 can be applied to the appellants' distilleries but at the cost of the State

exchequer only. By an interim order dated 21st March 1996 the interim stay of the impugned demands was continued subject to the condition that the appellants shall pay 50% of the arrears of the demand within eight weeks and will continue to pay 50% of the future demand. .... Even if the appellants succeeded they will be entitled to refund of the amount paid by them with interest at the rate of 12%. In view of this interim order, as the appellants have succeeded in these appeals as aforesaid in getting the impugned demands quashed the respondents are directed to refund the amounts collected by them from the appellants pursuant to the impugned demands pending these appeals with 12% interest from the date of receipt of such amounts till repayment. The amounts shall be refunded within eight weeks from the receipt of the copy of this order by the respondents. The appeals accordingly are partly allowed. In the facts and circumstances of the cases there will be no order as to costs all throughout.

Jfdl;fkld;
lkfjdlkjfdlfjdlfjdlfjd
sjdlsjdls
djslkdjslkdj
kdjskldsl

JUDIS