2026 INSC 753

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3954 OF 2018

STATE OF U.P. & ORS. ... APPELLANT(S)

VERSUS

ZAFAR ALI & ORS. ... RESPONDENT(S)

WITH
CIVIL APPEAL NO. 3956 OF 2018
WITH
CIVIL APPEAL NO. 3955 OF 2018
AND
CIVIL APPEAL NO. 8137 OF 2012

J U D G M E N T

S.V.N. BHATTI, J.

1. The respondents in Writ (Tax) No. 507 of 2011 are the Appellants herein.

2. The Appeal examines the levy and demand of penalty for non-performance of Minimum Guaranteed Quota (for short, 'MGQ') by the Respondents, under the Uttar Pradesh Excise (Settlement of Licences for Retail Sale of Country Liquor) Rules, 2002 (for short, 'Rules 2002'). It concerns a dispute arising out of an excise licence granted to the Respondents for the years 2006-07 and 2007-08, namely, whether a retail country liquor licensee, who has fulfilled and lifted the entire annual minimum guaranteed quantity fixed for the excise year, can still be held liable to pay deficit licence fees, penalties, and interest if there was a short-fall in lifting the monthly minimum guaranteed quantity in a particular month. The prayer in the Writ Petition reads as follows:

> *"(i) Issue a writ, order or direction in the nature of certiorari be passed quashing the impugned reply dated 17.08.2010 sent on behalf of U.P. Government and others by the D.G.C. Civil. Bijnore and letter of Excise Commissioner dated 09.03.2010 and notices of demand dated 17 March, 2009 and 20 March, 2009 which are filed as Annexure No. 1, 3 & 4 to this writ petition be quashed, and also declaring the same legal on just.*
> *(ii) Issue a writ, order or direction in the nature of Mandamus, thereby directing respondent to release the security amount of the petitioners deposited with the District Officers, Bijnore for the Excise Year 2006-07 of the Petitioners No. 4, 19, 25, 32 & 33 and also of the deposits of all the petitioners deposited in the Excise Year 2007-08 as Security Deposits, as the licensees of country made liquor shops of District Bijnore for the period of 01.04.2006 to 31.03.2007 and 01.04.2007 to 31.03.2008 and which have been illegally deducted in the name of penalty and interest imposed upon penalty and details of which is shown in Annexure Nos. 5 & 6 of the Writ Petition be directed to be immediately released to the petitioners of the Excise Year 2007-08 on the basis of parity as has been given to the Country Liquor Licensees of District Lucknow and Unnao.*
> *(iii) To issue directions in the nature of mandamus commanding to oppose parties to immediately refund the security deposits after deducting only Rs. 5000/- of each shops of the petitioners without any delay and also with interest for illegal withelding of the aforesaid security amounts of the petitioners @ 18% per annum or any amount of interest of which this Hon'ble Court pleased to fix, to the petitioners."*

3. To appreciate the controversy between the parties, illustratively, the relevant portion of an impugned Demand Notice dated 20.03.2009 issued to the Petitioner in Writ (Tax) No. 507 of 2011 is excerpted hereinunder:

> *"…Under para 15(a) Uttar Pradesh Excise (Settlement of Licence for retail sale of Country liquor), Rules, 2002, licensee may lift quantity of Country liquor in excess of the monthly minimum guaranteed quantity without satiating any additional payment. In case licensee lifts quantity of Country liquor in excess of the minimum monthly guaranteed quantity*

in the month under para 15(c), then he would be entitled to earn the residual amount of licence fee. But such adjustment would not be excess of 20 percent of the monthly licence fee. The details of the Country liquor lifted by you in the month of March, 2008 in the year 2007-08 are as under: -

S.No	Name of Shop	Annual MGQ (in B.L)	Monthly MGQ ((in B.L)	Prescribed quantity lifted in after adjustment of 20% of MGQ	Quantity lifted in the month of March 07 in B.L	Difference of quantity lifted (in B.L)
1	2	3	4	5	6	7
1	Bijnaur No. 2	92230.00	7685.00	6148.00	4662.00	1486.00

Therefore, in compliance of order of the respected District Collector dated 20.03.09 you are directed to deposit the amount consideration fee payable and amount of penal interest Rs.1,61,320.00 on the less quantity lifted in the Government Treasury at once and ensure making producing treasury challan before the undersigned.

Sd/-
(R.K Ram)
District Excise Officer,
Bijnaur

4. The circumstances preceding the filing of the Writ Petition before the High Court are that on 21.07.2004 and 27.05.2006, licences for country liquor shops were granted and subsequently renewed for the periods 2006-2007 and 2007-2008. On 09.03.2009, the Excise Commissioner issued a Circular directing Officers to ensure strict compliance with MGQ lifting to meet revenue targets. It stipulated that adjustments for excess lifting were permissible only up to 20% in the next month and that shortfalls below 80% must be adjusted from security deposits. On 17.03.2009 and 20.03.2009, Demand Notices were issued to the licensees for failing to lift the required MGQ for specific months, imposing penalties and initiating deductions from their security deposits. On 27.07.2009, the Deputy Excise Commissioner (for short, 'DEO') requested a partial amendment and clarification of Rule 15(c) of the Rules 2002 to avoid ongoing confusion regarding penalties. On 06.07.2010, the aggrieved licensees sent a legal notice to the State demanding the release of their security deposits, arguing that the MGQ is to be calculated on an annual, not monthly, basis. On 17.08.2010, the State replied to the legal notice, refusing the refund and reiterating that adjustments beyond 20% were not permissible under the Rules 2002. On 25.11.2010, the licensees filed a Writ Petition (Writ Tax No. 507 of 2011) in the High Court of Judicature at Allahabad.

5. The Respondents' case before the High Court is that they were granted licences for Country Liquor Shops in District Bijnor. As per the terms of the licences and the U.P. Excise Act, 1910 (for short, 'Excise Act'), each Respondent deposited the required annual licence fees and security money. Such security deposits were legally required to be refunded after the end of the Excise year if there were no outstanding Excise revenue dues. The Respondents had lifted the entire annual MGQ fixed for their shops for both the 2006-07 and 2007-08 Excise years, and were not defaulters, because the annual MGQ is divided into 12 monthly instalment quotas. Under the existing adjusting system, if a licensee failed to lift the quota in a particular month, they were entitled to lift the balance or even excess up to 20% in subsequent months. The Excise Commissioner issued a Circular on 09.03.2009, directing the imposition of penalties for failing to lift monthly quotas. Following this

Circular, the DEO issued new Demand Notices in March 2009, fixing duty as a penalty and calculating interest. These amounts were then unilaterally adjusted and deducted from the Respondents' security deposits. The Appellants wrongly refused the refund, claiming that the Respondents were barred by the principle of 'Estoppel and Acquiescence' because they accepted the balance of their security deposits. It was contended that the Respondents accepted the remaining amount only because they urgently needed funds to continue their business for the next year and never intended to waive their claim for a full refund. In a similar case (Writ Petition No. 11820 (M/B) of 2009) involving licensees in Unnao and Lucknow, the High Court's intervention led the Commissioner to fix a nominal charge of only Rs. 5,000 per shop instead of full penalties. Hence, the Respondents are entitled to the same benefit of parity. It was prayed that the rejection reply dated 17.08.2010, the Excise Commissioner's Order dated 09.03.2010, and the Demand Notices from March 2009, be quashed. Further, a direction may be passed to release the withheld security deposits for the Excise Years 2006-2007 and 2007-2008.

6. The Appellants opposed the Writ Prayer before the High Court. The Appellants' case was that the Respondents had an alternative statutory remedy of appeal under Section 11(1) of the Excise Act. Hence, the Writ Petition was not maintainable in the presence of an alternative statutory remedy. The Respondents voluntarily applied for a refund of their security deposits after the State adjusted consideration fees under Rules 14 and 15 of the Rules, 2002 and received the refunded balance. By concealing these voluntary refund applications in their petition and accepting the refunded amounts, the Respondents are barred by estoppel. Trade in country liquor is *res extra commercium*, i.e., outside the scope of normal commerce. Under Section 24B of the Excise Act, the State holds the exclusive privilege over its manufacture and sale. The Respondents accepted the licence conditions and remain bound by them. Under Rule 15(c) of the Rules, 2002, any credit balance earned by lifting excess liquor in a month cannot be adjusted beyond 20% of that month's licence fee. The Respondents adjusted more than 20% of their monthly licence fee in March while short-lifting their MGQ. This directly breached Rule 15(c) and Condition No. 2 of their licence. The Respondents incorrectly relied on communications from the Excise Commissioner dated 04/06.03.2010 and 11.03.2010 to contend that their liability could be settled by paying a Rs. 5,000 penalty. It is clarified that the Rs. 5,000 fee is a compounding fee under Section 74 of the Excise Act, paid strictly in lieu of an offence to prevent licence cancellation or criminal prosecution. Accepting the Writ Prayer would be absurd because paying a compounding fee for an operational offence does not legally relieve a licensee of their separate, outstanding contractual debts, which can run into lakhs or crores.

7. The Impugned Judgment has dealt with the controversy and has allowed the Writ Petition. It quashed demand notices issued by the DEO, holding that if a licensee fulfils their Annual MGQ for the entire Excise year, the State cannot penalise them for a shortfall in an isolated month by ignoring the cumulative "credit balance" they earned in prior months. The summary of the view of the High Court is stated as thus:

A. Under Rule 15(c) of the Rules 2002, if a licensee lifts excess liquor in a given month, they earn a "credit balance of licence fee". This credit is designed to be carried forward to ongoing months. The Excise Department acted arbitrarily by calculating the deficit for a single isolated month without factoring in the accumulated credit balance the Respondents had earned in previous months. Because the Respondents fulfilled the annual MGQ, the prior credit balances more than covered any isolated monthly shortfall.

B. Rule 14(c) of the 2002 Rules mandates that if a licensee falls short of their monthly quota, the District Excise Officer must issue a notice by the 3rd day of the next month. This allows the licensee to replenish the deficit within 10 days. The authorities failed to issue any such notices during the currency of the Excise years. Issuing Demand Notices retroactively, well after the Excise year had ended and the annual quotas were fulfilled, was deemed wholly unreasonable and arbitrary.

C. The Court rejected the State's argument that the Respondents should have filed an appeal to the Excise Commissioner under the Excise Act. It was held that because the initial recovery notices were directly triggered by a Circular issued by the Excise Commissioner himself on 09.03.2009, an appeal to that same Authority would not be appropriate.

D. The State's argument that because the Respondents accepted a partial refund of their security deposits, they forfeited their right to sue was dismissed. It was held that accepting a partial refund of their security deposit did not forfeit the Respondents' right to challenge an illegal demand raised before the refund occurred.

E. Therefore, the Demand Notices dated 17.03.2009 and 20.03.2009 were quashed, and the State was ordered to refund the security amounts to the Respondents within one month of the Order being produced before the Authority.

8. Hence, the Civil Appeal(s).

9. Advocate Namit Saxena, appearing for the Appellants argues that the Respondents were granted a licence under Form C.L. 5-C for the retail sale of light and high-degree country liquor in sealed bottles and containers for use outside the outlet. The licence sets out the conditions under which it has been granted. As an illustrative case, he has invited our attention to Annexure P-1, which pertains to Shop Bijnor No. 2, District-Bijnor. The basic licence fee is Rs. 7,39,200/-, and the minimum annual guaranteed quantity is 73,920 bulk litres, which works out to 6,160 bulk litres per month. The annual licence fee is Rs. 58,39,618/-, and the monthly instalment of licence fee is Rs. 4,86,640/-. The licensee is obliged to comply with the MGQ of 6,160 bulk litres every month. Referring to the Notice, it is argued that there is a difference in quantity at Shop No. 2 of Bijnore. The MGQ payable comes to Rs. 1,36,712/-. It is argued that the adjustment is available in the following month, and there is also a provision for higher requisitioning of liquor; since, for the month of March, 2008, the licensee has not complied with the MGQ, the levy is demanded.

9.1. He has invited our attention to the Rules 2002, and argues that the Impugned Judgment does not conform to the plain and simple construction of Rules 14 and 15 of the Rules 2002. He prays for the setting aside of the Impugned Judgment.

10. Advocate A. T. Rao, appearing for the Respondents, argued that the licensees have not committed a breach of MGQ. The licensees have purchased the MGQ stipulated under each licence. The dispute has arisen on account of short purchase of MGQ, particularly in the month of March of the Excise year. Ignoring the annual compliance of MGQ performance and looking only at the short performance for the month of March, MGQ is levied and demanded. He invited our attention to the definition of licence fee and to Rules 13 to 15 of the Rules 2002. The conditions in Form 'C' licence are construed and read consistently with the Rules. There is no occasion to impose penalty and interest on penalty for non-performance of MGQ. He relies upon the detailed consideration of all the contentions by the High Court and prays for dismissal of the appeals.

11. We have taken note of the rival contentions and perused the record.

12. At the outset, we would like to observe that the Impugned Judgment has considered the contentions on facts and law, applied correct interpretations to the Rules and the terms and conditions of the Country Liquor 5-C licence, and has quashed the impugned Notice issued by the Appellants. A ground is canvassed before us; we would like to test the correctness of the Appellants' arguments as follows:

12.1. The preface to the country liquor '5-C' licence refers to the licence fee and MGQ. The levy and demand for non-compliance with MGQ are either for one month or for two months, but the same licensee has, admittedly, complied with the Minimum Annual Guaranteed Quantity. For our purpose, we excerpt the definition clause (m) of licence fee and monthly instalment licence fee hereinbelow:

"(m) "licence fee" means the remaining part of consideration for grant of licence for exclusive privilege of retail sale of country liquor under Section 24 of the Act, payable by the licencee, in addition to the basic licence fee. This sum shall be equal to the excise duty leviable on the annual minimum guaranteed quantity fixed for the shop"

14. Payment of monthly instalment of license fee and consequence of failure –

(a) The licensee shall be liable to pay the monthly intalment of licence fee by the last day of the month. However the duty involved in the quantity of country liquor lifted by him during the month and credit balance of licence fee from previous month, if any, shall be adjusted against the monthly instalment of licence fee according to provisions of these rules.

(b) the licensee shall be required to submit his account and licence fee passbook, giving details of the country liquor lifted by him and the licence fee deposited, to the District Excise Officer by 5.00 p.m. of the 1st day of the next month for verification and calculation of licence fee due from him.

(c) In case there is any short fall in the licencee fee, after due adjustment of duty involved in the country liquor lifted by the licensee and credit balance of licence fee from previous month, according to provisions of these rules and District Excise Officer shall adjust the outstanding balance amount of licence fee from the security deposit of the licensee and also issue a notice to the licensee by the 3rd day of the next month to replenish the deficit in security amount either by lifting such quantity of country liquor involving duty equivalent to the adjusted amount of by depositing cash or a combination of both. In case the licensee fails to replenish the deficit in security amount by the 10th day of the next month his licence shall stand cancelled."

13. A perusal of the aforesaid Rules indicates that the licence has a licence fee, an annual licence fee, and an MGQ. The fixed element may be termed the basic licence fee, and the licence fee is in addition to the basic licence fee payable under the licence. The licence fee is distributed over the period of the Excise year, and in the event of a licensee lifting excess of Country Liquor over and above the MGQ, the licensee is entitled to a Credit Balance of the licence fee. It is not the case of the Appellants that the licence conditions in this behalf are not complied with. The situation arose from overstretching the understanding of the performance of the minimum annual guaranteed quantity and the minimum monthly guaranteed quantity. The Appellants insists on performing the minimum annual guaranteed quantity and the minimum monthly guaranteed quantity. We hypothetically test the understanding of the performance of the licence conditions by an example: if a licensee completes the minimum annual guaranteed quantity within six months and continues to pay the minimum monthly licence fee for the remainder of the licence period, should he be demanded to pay a penalty for non-performance if the minimum monthly guaranteed quantity is not achieved? In such an event, the licensee will continue to pay $1/12^{th}$ of the monthly licence fee and the underperformance penalty without proper credit for the already performed minimum annual guaranteed quantity. The definition of licence fee in Clause (m) of Rule 2 of the Rules 2002 does not support the view of the Appellants.

14. The enforcement of licence terms and conditions, as noted above, *prima facie,* suffers from an infirmity of fact. The Appellants do not dispute that it has received the annual licence fee from the licensee. The complaint is of non-performance with respect to MGQ for the defaulted month. The non-performance also occurred during the last phase of the Excise year. The licensee has since paid the licence fee and performed the minimum annual guaranteed quantity well before the completion of the Excise year. Non-performance of MGQ at the time of completion of the licence period is not a ground for levying and demanding a penalty, both under the Rules 2002, and as per the terms of the Form 5-C licence. We are not expressing a view that the licensee is under no obligation to conform to MGQ, but insisting upon the licensee to adhere to MGQ, and finally to the Monthly Guaranteed Quota, is not an available and correct interpretation of the Licence Fee Rules and the terms and conditions.

15. The mode and manner of performance insisted upon by the Appellants through the impugned Demand Notice do not conform to the plain meaning of the statutory rules. The Demand Notice was not issued contemporaneously, but after the lapse of a reasonable time. These infirmities go to the root of the impugned demand. Therefore, through the Impugned Judgment, the High Court has rightly interfered with the Demand Notice. The Impugned Judgment has considered every aspect in great detail and recorded correct and available conclusions, and hence does not call for interference.

16. Except the above, no other point is argued.

17. The Civil Appeals are, accordingly, dismissed.

18. Pending application(s), if any, shall stand disposed of.

..................................J.
[S.V.N. BHATTI]

..................................J.
[N.V. ANJARIA]

New Delhi;
July 28, 2026.