



WA Nos.808, 810, 815, 830, 831,

2025:KER:33869

834, 837 and 838 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

WA NO. 808 OF 2024

AGAINST THE JUDGMENT DATED 21.12.2022 IN WP(C) NO.20441 OF

2022 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES
DEPARTMENT, SECRETARIAT, TRIVANDRUM. PIN - 695001
- 2 THE COMMISSIONER OF EXCISE,
TRIVANDRUM. PIN - 695001
- 3 THE INSPECTOR OF EXCISE,
ELITE DISTILLERIES AND BEVERAGES COMPANY, KIRALLOOR
P.O., MUNDOOR, TRISSUR , PIN - 680541

BY ADV VINITHA. B, GOVERNMENT PLEADER

RESPONDENT/PETITIONER:

T.R.VIJAYAKUMAR, AGED 61 YEARS
PROPRIETOR, ELITE DISTILLERIES AND BEVERAGES COMPANY,
KIRALLOOR P.O., MUNDOOR, TRISSUR., PIN - 680541

BY ADV Raju K. Mathews

THIS WRIT APPEAL WAS FINALLY HEARD ON 01.04.2025 ALONG WITH
WA NOS.810 OF 2024 AND CONNECTED CASES, THE COURT ON 19.05.2025
PASSED THE FOLLOWING:



WA Nos.808, 810, 815, 830, 831,

2025:KER:33869

834, 837 and 838 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

WA NO. 810 OF 2024

AGAINST THE JUDGMENT DATED 21.12.2022 IN WP(C) NO.4161 OF

2022 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, TRIVANDRUM
PIN - 695001.,
- 2 THE INSPECTOR OF EXCISE,
TRIVANDRUM, PIN - 695001.
- 3 THE INSPECTOR OF EXCISE, CASSANOVA DISTILLERIES
PVT.LTD, NATTAKAM P.O, KOTTAYAM - 686013.

BY ADV VINITHA.B, GOVERNMENT PLEADER

SPONDENT/PETITIONER:

CASSANOVA DISTILLERIES PVT. LTD
NATTAKAM P.O, KOTTAYAM - 686013, REPRESENTED BY ITS
POWER OF ATTORNEY MR. K. MATHEWSON, PIN - 686013

BY ADVS.
TOM THOMAS (KAKKUZHIYIL)
K.R.PAUL

THIS WRIT APPEAL WAS FINALLY HEARD ON 01.04.2025 ALONG WITH
WA NOS.808 OF 2024 AND CONNECTED CASES, THE COURT ON 19.05.2025
PASSED THE FOLLOWING:



WA Nos.808, 810, 815, 830, 831,

2025:KER:33869

834, 837 and 838 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947WA NO. 815 OF 2024

AGAINST THE JUDGMENT DATED 21.12.2022 IN WP(C) NO.8038 OF

2022 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES
DEPARTMENT, SECRETARIAT, TRIVANDRUM, PIN - 695 001.,
- 2 THE COMMISSIONER OF EXCISE
TRIVANDRUM, PIN - 695 001
- 3 INSPECTOR OF EXCISE
POLSONS DISTILLERY, MURINGOOR, CHALAKUDY - 680309.,
PIN - 680309

BY ADV VINITHA B, GOVERNMENT PLEADER

RESPONDENT/PETITIONER:

POLSON DISTILLERY, MURINGOOR, CHALAKUDY - 680309,
REPRESENTED BY ITS MANAGING PARTNER MR. PAUL ANTO
PERINCHERY., PIN - 680309

BY ADV Raju K. Mathews

THIS WRIT APPEAL WAS FINALLY HEARD ON 01.04.2025 ALONG WITH
WA NOS.808 OF 2024 AND CONNECTED CASES, THE COURT ON 19.05.2025
PASSED THE FOLLOWING:



WA Nos.808, 810, 815, 830, 831,

2025:KER:33869

834, 837 and 838 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

WA NO. 830 OF 2024

AGAINST THE JUDGMENT DATED 16.11.2022 IN WP(C) NO.14971 OF

2021 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, TRIVANDRUM,
PIN - 695 001.
- 2 THE COMMISSIONER OF EXCISE,TRIVANDRUM, PIN - 695 001.
- 3 THE INSPECTOR OF EXCISE ,M/S SEVEN SEAS DISTILLERY
LTD., MANNUTHY P. O., THRISSUR - 680 651.

BY ADV VINITHA.B, GOVERNMENT PLEADER

RESPONDENT/PETITIONER:

SEVEN SEAS DISTILLERY PVT. LTD.
MANNUTHY P. O., THRISSUR - 680651, REPRESENTED BY ITS
GENERAL MANAGER MR. K. D. ANTU., PIN - 680651

BY ADV Raju K. Mathews

THIS WRIT APPEAL WAS FINALLY HEARD ON 01.04.2025 ALONG WITH
WA NOS.808 OF 2024 AND CONNECTED CASES, THE COURT ON 19.05.2025
PASSED THE FOLLOWING:



WA Nos.808, 810, 815, 830, 831,

2025:KER:33869

834, 837 and 838 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947WA NO. 831 OF 2024AGAINST THE JUDGMENT DATED 21.12.2022 IN WP(C) NO.50 OF
2022 OF HIGH COURT OF KERALAAPPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, TRIVANDUM,
PIN-695 001,
- 2 THE COMMISSIONER OF EXCISE,TRIVANDRUM,PIN-695 001.
- 3 THE INSPECTOR OF EXCISE,NORMANDY BREWERIES AND
DISTILLERIES PVT LTD., CHEEMENI, CHERUVATHUR (VIA)
KASARAGOD DISTRICT-671 313.
- 4 DEPUTY EXCISE COMMISSIONER,EXCISE DIVISION OFFICE,
KASARAGOD-671 313,

BY ADV VINITHA.B, GOVERNMENT PLEADER

RESPONDENT/PETITIONER:NORMANDY BREWERIES AND DISTILLERIES PVT LTD
CHEEMENI, CHERUVATHUR (VIA), KASARAGOD DISTRICT-671
313, REPRESENTED BY ITS MANAGING DIRECTOR MR.ARUN
JOSEPH, PIN - 671313

BY ADV Raju K. Mathews

THIS WRIT APPEAL WAS FINALLY HEARD ON 01.04.2025 ALONG WITH
WA NOS.808 OF 2024 AND CONNECTED CASES, THE COURT ON 19.05.2025
PASSED THE FOLLOWING:



WA Nos.808, 810, 815, 830, 831,

2025:KER:33869

834, 837 and 838 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947WA NO. 834 OF 2024

AGAINST THE JUDGMENT DATED 16.11.2022 IN WP(C) NO.101 OF

2021 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES
DEPARTMENT, THIRUVANANTHAPURAM-695001.
- 2 THE COMMISSIONER OF EXCISE
THIRUVANANTHAPURAM-695001.
- 3 THE EXCISE INSPECTOR
K S DISTILLERY, VARAM, KANNUR-670594.,

BY ADV.VINITHA.B, GOVERNMENT PLEADER

RESPONDENT/PETITIONER:

K.S.DISTILLERY
(A UNIT OF SREEDHARAN AND COMPANY PRIVATE LIMITED),
VARAM, KANNUR-670594. REPRESENTED BY ITS JOINT
MANAGING DIRECTOR MR. K ANUP., PIN - 670594

BY ADV Raju K. Mathews

THIS WRIT APPEAL WAS FINALLY HEARD ON 01.04.2025 ALONG WITH
WA NOS.808 OF 2024 AND CONNECTED CASES, THE COURT ON 19.05.2025
PASSED THE FOLLOWING:



WA Nos.808, 810, 815, 830, 831,

2025:KER:33869

834, 837 and 838 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

WA NO. 837 OF 2024

AGAINST THE JUDGMENT DATED 16.11.2022 IN WP(C) NO.12752

OF 2021 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, THIRUVANANTHAPURAM-695001.
- 2 THE COMMISSIONER OF EXCISE, EXCISE COMMISSIONERATE, THIRUVANANTHAPURAM-695001.
- 3 THE EXCISE INSPECTOR, DEVICOLAM DISTILLERIES LTD., KAKKANAD-682030, ERNAKULAM DISTRICT., PIN - 682030
- 4 DEPUTY COMMISSIONER OF EXCISE, EXCISE DIVISION OFFICE, ERNAKULAM-682018.

BY ADV VINITHA.B, GOVERNMENT PLEADER

RESPONDENT/PETITIONER:

DEVICOLAM DISTILLERIES LTD., KAKKANAD-682030, ERNAKULAM DISTRICT, REPRESENTED BY ITS MANAGER AND AUTHORIZED SIGNATORY MR.ABHILASH V., PIN - 682030

BY ADV Raju K. Mathews

THIS WRIT APPEAL WAS FINALLY HEARD ON 01.04.2025 ALONG WITH WA NOS.808 OF 2024 AND CONNECTED CASES, THE COURT ON 19.05.2025 PASSED THE FOLLOWING:



WA Nos.808, 810, 815, 830, 831,

2025:KER:33869

834, 837 and 838 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947WA NO. 838 OF 2024

AGAINST THE JUDGMENT DATED 21.12.2022 IN WP(C) NO.12183 OF

2022 OF HIGH COURT OF KERALA

APPELLANT/RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, THIRUVANANTHAPURAM 695 001.
- 2 THE COMMISSIONER OF EXCISE, EXCISE COMMISSIONERATE, THIRUVANANTHAPURAM 695 001.
- 3 EXCISE INSPECTOR,M/S. AMRUT DISTILLERIES PVT. LTD. CHULLIMADA, PAMPAMPALLAM, PALAKKAD DISTRICT, 678 621., BY ADV VINITHA.B, GOVERNMENT PLEADER

RESPONDENT/PETITIONER:

AMRUT DISTILLERIES PVT LTD, M/S. AMRUT DISTILLERIES PVT. LTD., CHULLIMADA, PAMPAMPALLAM, PALAKKAD DIST. 678 621, REPRESENTED BY ITS GENERAL MANAGER (P& A) MR. AMBILI AMBAT., PIN - 678621

BY ADV Raju K. Mathews

THIS WRIT APPEAL WAS FINALLY HEARD ON 01.04.2025 ALONG WITH WA NOS.808 OF 2024 AND CONNECTED CASES, THE COURT ON 19.05.2025 PASSED THE FOLLOWING:

**COMMON JUDGMENT****Muralee Krishna, J.**

The common issue involved in these writ appeals is as to whether the cost of establishment payable to the Government by the respondents - private distilleries for deploying exercise officials to supervise the manufacturing of liquor and allied activities is the full pay and allowances payable to the post of the Officers deployed or only the charge allowance payable under Rule 53(b) of Part I of the Kerala Service Rules ('KSR' in short), since the Officers deployed were holding only additional charge?

2. The respondents in these writ appeals are private distilleries engaged in the manufacturing of Indian Made Foreign Liquor who sell the same to the Kerala State Beverages (Manufacturing and Marketing) Corporation. They filed the respective writ petitions raising a grievance that even though the Inspectors deputed to supervise the activities of the distilleries were holding only additional charge, the Excise Commissioner collected full pay and allowances payable to the post of Excise Inspector from them. In the writ petitions filed under Article 226



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of the Constitution of India, the respondents sought a writ of mandamus directing the appellants to recompute the amount payable by them by way of cost of establishment for the period mentioned in those writ petitions, in terms of provisions of Rule 53(b) of Part I of KSR and to refund the amount collected from them in excess of the said amount and other ancillary reliefs. By the impugned judgments in the respective writ petitions, the learned Single Judge found that in view of Rule 53(b) of Part I of KSR and a previous judgment dated 26.05.2009 of a learned Single Judge of this Court in W.P.(C)No.10459 of 2008, which was marked as Ext.P1 in the writ petitions, the appellants are entitled to charge only the additional allowance and not full pay of the persons who were deployed in the distilleries of the respondents, since they were deputed by giving additional charge of the Excise Inspector of the respective Excise Range.

3. Heard the learned Senior Government Pleader and the learned counsel for the party respondents.

4. The learned Senior Government Pleader would argue that the production, manufacture, possession, transport, purchase



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and sale of intoxicating liquors are coming under Schedule VII, list II - State list under the Constitution of India. By the provisions under the Abkari Act, the Kerala Distillery and Warehouse Rules 1968, Foreign Liquor (Storage in bond) Rules 1961 and Kerala Rectified Spirit Rules 1972, the State Government is authorised to depute Excise Officials for supervising the activities of distilleries and the cost of establishment for deputing such Officer has to be borne out by the distilleries. The learned Single Judge went wrong by holding that such cost of establishment or in other words the salary of the Excise Inspector so-deployed is only the charge allowance that has to be paid under Section 53(b) of part I of KSR. It is vehemently argued by the learned Senior Government Pleader that the respondents cannot take such a stand since they are bound by the license conditions, wherein they have agreed to pay the actual cost payable to the Officer deputed from the Excise Department as decided by the Excise Commissioner. The decision regarding the charge allowance payable under Section 53(b) is actually the one between the Government and its employees and the respondent distilleries cannot take advantage of the same. The



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learned Senior Government Pleader submitted that the presence of the officer deployed from the Excise Department in the distilleries would be necessary throughout the manufacturing and allied activities, and hence it cannot be said that the Excise Inspector deputed had done only a supervisory additional duty.

5. On the other hand, the learned counsel appearing for the distilleries would argue that the cost of establishment payable by the respondents for deputing an Officer of the Excise Department is the actual cost. In the instant cases, the Excise Inspectors of other ranges gave additional charge of the Range Offices wherein the distilleries are situated and hence they are entitled for only charge allowances under Section 53(b) of Part I of KSR.

6. The production, manufacture, possession, transport, purchase and sale of intoxicating liquor will come under the List II - State list as item No.8 in Schedule VII of the Constitution of India. As per Article 246 (3) of the Constitution of India, the legislature of the State has exclusive power to make laws for the entire State or any part thereof with respect to any of the matters



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enumerated in List II in the VIIth Schedule. As per Section 12 of the Abkari Act, no liquor or intoxicating drug shall be manufactured except under the authority and subject to the terms and conditions of a license granted by the Commissioner in that behalf, or under the provisions of Section 21 of that Act. As per Section 14(d) of the Abkari Act, the Commissioner may with the previous approval of the Government prescribe the mode of supervision that may be necessary in a distillery, brewery, winery or other manufactory or warehouse so established, or in any other manufactory where preparations containing liquor or intoxicating drugs are manufactured, to ensure the proper collection of duties, taxes, and other dues payable under that Act or the proper utilisation of liquor or intoxicating drugs. As per Section 14(e) of the Abkari Act, the Commissioner may with the previous approval of the Government prescribe the size and nature of the establishment necessary for such supervision and the cost of establishment and other incidental charges in connection with such supervision to be realised from the licensees.

7. As per Rules 3 and 4 of the Kerala Distillery and



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Warehouse Rules, 1968, ('Distillery Rules' in short) the application for a license has to be made to the Deputy Commissioner of the Excise, wherein the decision has to be taken by the Excise Commissioner, being forwarded to him by the Deputy Commissioner with all necessary documents submitted by the parties. Rule 12 of Distillery Rules gives power to the Commissioner to withdraw the establishment in case a distillery ceases to distil or for a period exceeding one month after following the procedure prescribed therein. Rule 13 of the Distillery Rules says that the strength of the establishment maintained at a distillery shall ordinarily be one Excise Inspector, one Preventive Officer and three guards, but when, in the opinion of the Commissioner such establishment is not sufficient to cope up with the work, it may be increased with the sanction of the Government. Rule 14 of the Distillery Rules deals with the cost of establishment which reads thus:

"14 -1. Cost of establishment.

(1) The Distiller shall pay the cost of the establishment, employed in the distillery at such rate as may be prescribed by the Government from time to time, and intimated to the



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licensee in writing. The cost of establishment of the officer and the staff shall be payable by the licensee in advance in the first day of every month as per countersigned chalan to be obtained from the Officer. If the licensee fails to remit the cost on the first day of every month, interest at eighteen per cent shall be charged and from the 20th day of the month, penal interest at two and a half percent shall also be charged. If the licensee fails to remit the cost on the first day of the succeeding month he shall be served with a notice requiring him to remit the amount within a specified period and directing to show cause why staff should not be withdrawn for the default in remitting the amount before the expiry of the said period. If the licensee fails to remit the cost of establishment within the time stipulated in the notice, the Deputy Commissioner of Excise of the Division shall address the Board of Revenue and get sanction for the withdrawal of the staff. The licensee shall be liable to pay the arrears of differential cost of establishment, if the rates of pay and allowances are revised by the government retrospectively.

Explanation.-- In this sub-rule 'cost of establishment' means average cost of pay, leave salary and pension contribution.

8. Rule 16 of Kerala Rectified Spirit Rules, 1972 deals with the storage of rectified spirit, etc. Rule 16(4) and (5) read as under:

"16. Bonded spirit store licence for possession and



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use of non-duty paid rectified spirit other than by distilleries.--

- | | | | |
|-----|-----|-----|-----|
| (1) | xxx | xxx | xxx |
| (2) | xxx | xxx | xxx |
| (3) | xxx | xxx | xxx |

(4) All the transactions in the spirit store shall be conducted only in the presence of an Excise officer not below the rank of an Excise Inspector. Such Officer shall be assisted by at least two Excise Guards. The cost of establishment of such Officer and the guards shall be payable by the licensee in advance in the first day of every month as per countersigned chalan to be obtained from such officer. The rate at which the cost of establishment is to be paid by the licensee shall be fixed by the Commissioner from time to time and intimated to the licensee in writing. If the licensee fails to remit the cost on the first day of every month, interest at [18 per cent] shall be charged and from the 20th day of the month, penal interest at 2 1/2 per cent shall be charged. If the licensee fails to remit the cost on the first day of the succeeding month he shall be served with a notice requiring him to remit the amount within a specified period and directing to show cause why the staff should not be withdrawn for the default in remitting the amount before the expiry of the said period. If the licensee fails to remit the cost of establishment within the time stipulated in the notice, the Assistant Excise Commissioner of the Division shall address the Board of Revenue and get sanction for the



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withdrawal of the staff. The licensee shall be liable to pay the arrears of differential cost of establishment if the rates of pay and allowances are revised by the Government retrospectively.

Explanation:- In this sub-rule, cost of establishment means actual cost of the staff appointed for the purpose of excise supervision, which includes pay, dearness allowance, uniform allowance and other compensatory allowances calculated at such rates as may be prescribed by the Commissioner from time to time.

(5) The services of the supervisory staff shall be made available to the licensee for 8 hours a day at any time between 6 a.m. and 6 p.m. The hours of working shall be fixed by the Commissioner to suit the convenience of the licensee and it shall not be changed without his permission."

9. Similarly, Rule 9(b) of Foreign Liquor (Storage in Bond)

Rules 1961, reads thus:

"9 (a) xxx xxx xxx

(b) The Warehouse Keeper/Licensee/Kerala State Beverages (Manufacturing & Marketing) Corporation shall pay the cost of establishment of Excise staff employed in the Warehouse/office including allowances, leave salary and pension contribution in advance, on the first working day of every month as per countersigned chalan obtained from the officer of the institution. The rate at which the cost of establishment is to be paid by the licensee shall be fixed by the Commissioner from time to time and intimated to the



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licensee in writing. If the licensee fails to remit the cost on the first working day of every month, interest at the rate of eighteen per cent per annum shall be charged, and from the 20th day of the month, penal interest at the rate of two and a half per cent per annum shall also be charged. If the licensee fails to remit the cost on the first working day of the succeeding month, he shall be served with a notice requiring him to remit the amount within a specified period and directing to show cause why the staff should not be withdrawn for the default in remitting the amount before the expiry of the said period. If the licensee fails to remit the cost of establishment within the time stipulated in the notice, the Assistant Excise Commissioner of the Division shall address the Board of Revenue and get sanction for the withdrawal of the staff. The licensee shall be liable to pay the arrears of differential cost of establishment, if the rates of pay and allowances are revised by the Government retrospectively.

Explanation.-- In this rule cost of establishment means actual cost of the staff appointed for the purpose of excise supervision, which includes pay, dearness allowance, uniform allowance and other compensatory allowances calculated at such rates as may be prescribed by the Commissioner from time to time."

10. Form IVA of the Distillery Rules is the form under which a license for a distillery is given by the Commissioner wherein the conditions that have to be incorporated in the licence are



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prescribed. As per condition No.18, the licensee shall pay in the Government Treasury in advance in the first day of each month, from the date of the licence, the actual cost of the staff appointed for the purpose of excise, supervision which includes pay, dearness allowance, uniform allowance and other compensatory allowances calculated at such rates as may be prescribed by the Commissioner from time to time. If the licensee fails to remit the amount on the first day of every month, interest at the rate of 18% shall be charged and from the 20th day of the month penal interest at 2.5% shall also be charged. In case of revision of pay and/or allowance of the staff with retrospective effect, the licensee shall be liable to pay to the Government the whole amount of arrears of differential cost caused by such retrospective revision.

11. There is no dispute between the parties to these writ appeals regarding the entitlement of the Government to depute Excise officials for supervision of the process of manufacture, storage, etc of liquor in the distilleries. The contention of the respondents distilleries is that since the Excise Inspectors deputed were the Officers holding additional charge, only the charge



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allowance is liable to be paid by the respondents in view of Rule 53(b) of Part I of KSR, which reads as under:

“The Competent Authority who appoints an officer to hold or to officiate in a second post in addition to his own, will declare whether he officiates in or holds full charge of the additional post or is appointed merely to discharge the current duties.”

As per the said provision, if an officer is appointed to officiate in a second post and to hold in addition full charge of his own post, he may be allowed to draw the highest pay to which he would be entitled if his appointment to one of the posts stood alone and in addition the special allowance which should not exceed 4 per cent of the minimum of the scale of pay of other post with effect from 01.02.2016.

12. From Rule 13 of the Distillery Rules, we notice that the strength of the establishment maintained by the distilleries includes officers of different ranks from the Excise Department. Nowhere in that rule it is stated that the officers so deputed are doing only a supervisory duty and they need not be present in the distillery during the manufacturing and the other activities in the distillery. On a query made by this Court, the learned Senior



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Government Pleader would submit that the officers would be present in the distillery from morning to evening to supervise the manufacturing and other allied activities of liquor in those establishments. The officers so deputed by the Government cannot be said as doing additional duty so as to contend that they are entitled to only charge allowance.

13. In **Southern Pharmaceuticals and Chemicals, Trichur and others v. State of Kerala and others [1981] 4 SCC 391**] the Apex Court held thus:

"It seems obvious that, in the case of a manufacturer of medicinal and toilet preparations containing alcohol in a bonded manufactory, the imposition of the cost of establishment under Section 14(e) of the Act calculated in accordance with the nature and extent of that establishment could not be said to be an imposition of a duty of excise, but is a price for his franchise to carry on the business. If an exaction is to be classed as a duty of excise, it must, of course, be a tax, its essential distinguishing feature is that it is a tax imposed "upon" or "in respect of" or "in relation to" goods: *Matthews v. Chickory Marketing Board* [60 CLR 263]. The exaction is in truth, as it purports to be, simply a fee payable as a condition of a right to carry on a business.



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27. No one has a fundamental right to the supply of rectified spirit which is an intoxicating liquor. It is up to the State to control and regulate its supply from a distillery or a spirit warehouse in the State under and in accordance with the terms and conditions of a licence or permit its import from outside by grant of a privilege and charge a fee for the same. A fee may be charged for the privilege or benefit conferred, or service rendered, or to meet the expenses connected therewith. A fee may be levied to meet the cost of supervision and may be, something more. It is in consideration for the privilege, licence or service. The State is undoubtedly entitled to levy excise duty on the rectified spirit issued from a distillery under Section 17(f) of the Act read with Rule 13 of the Kerala Rectified Spirit Rules, 1972, but it refrained from making any such levy by reason of Rule 21 of the Central Rules and has, therefore, by proviso to Rule 8, allowed a manufacturer of medicinal and toilet preparations to draw rectified spirit from a distillery without payment of duty. It is thus a privilege conferred on the licensee. To claim the privilege he must comply with the conditions prescribed. If one of the conditions is the payment of cost of establishment under Section 14(e) of the Act read with Rule 16(4) of the Central Rules, the manufacturer of such preparations must necessarily bear the burden as the licensee gets services in return in lieu of such payment.

Xxx xxxxx



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29. There is a broad co-relationship between the fee collected and the cost of the establishment. Under Section 14(e) of the Act it is provided that the Commissioner, with the previous approval of the Government, may prescribe the size and nature of the establishment necessary for supervision of a manufactory and the cost of the establishment and other incidental charges in connection with such supervision be realised from the licensee. There can be no doubt that the supervisory staff is deployed in a bonded manufactory by the Government for its own protection to prevent the leakage of revenue, but there is no denying the fact that a licensee undoubtedly receives a service in return. The cost of the establishment levied under Section 14(e) of the Act is to be collected from the licensee in the manner provided by Rule 16(4) of the Kerala Rectified Spirit Rules, 1972, relevant part of which reads: "All the transactions in the spirit store shall be conducted only in the presence of an Excise officer not below the rank of an Excise Inspector. Such officer shall be assisted by at least two Excise Guards. The cost of establishment of such officer and the guards shall be payable by the licensee in advance in the first week of every month as per counter signed challan to be obtained from such officer. The rate at which the cost of establishment is to be paid by the licensee shall be fixed by the Commissioner from time to time and intimated to the licensee in writing. . . ."

There is admittedly no provision made in the Central Rules



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for the recovery of supervisory charges, perhaps because as the Court observed in the *Hyderabad Chemical and Pharmaceutical case* [AIR 1964 SC 1870 : (1964) 7 SCR 376 : (1965) 1 SCJ 256] it was felt that the duty on medicinal and toilet preparations containing alcohol would be sufficient to defray the cost of such supervision. But the absence of such a provision in the Central Rules, as we have already indicated, does not deprive the State from making a provision in that behalf. It is true that the supervisory charges are in the nature of a compulsory exaction from a licensee and the collections are not credited to a separate fund, but are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure incurred in rendering the service. However, as observed in *Government of Madras v. Zenith Lamp & Electrical Ltd.* [(1973) 1 SCC 162 : 1973 SCC (Tax) 203 : AIR 1973 SC 724 : (1973) 2 SCR 973] followed in *State of Rajasthan v. Sajjanlal Panjawat* [(1974) 1 SCC 500 : AIR 1975 SC 706 : (1974) 2 SCR 741] , that by itself is not decisive, by reason of Article 266 of the Constitution. It is equally true that normally a fee is uniform and no account is taken of the paying capacity of the recipient of the service, but absence of uniformity will not make it a tax if corelationship is established (see *Commissioner, H.R.E., Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt* and *Government of Madras v. Zenith Lamp & Electrical Ltd.*



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[(1973) 1 SCC 162 : 1973 SCC (Tax) 203 : AIR 1973 SC 724 : (1973) 2 SCR 973]). The cost of supervision would necessarily vary with the nature and extent of the business carried on by a licensee. Therefore, the supervisory charges can be sustained even if they are regarded as a fee for services rendered by the State or its instrumentalities”.

14. During the course of arguments, the learned counsel for the respondents drew our attention to the judgment dated 11.06.2012 of the learned Single Judge in W.P.(C) No. 23356 of 2005 wherein it was held that the amount payable to an Excise Inspector who was holding full additional charge of distilleries is as provided under Rule 53(b) of Part I of KSR.

15. From the provisions referred to above, it is clear that the cost of establishment is to be decided by the Government and it is one of the license conditions for granting the privilege of manufacturing intoxicating liquor. The help of State missionaries by deputing its officials was given for availing such privilege, though said officials were deputed for preventing revenue loss also. Moreover, it is pertinent to note that there are no permanent cadre posts created for the supervision of the functions of the



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distilleries. The Officers are deployed by the Government. In such circumstances, the respondents cannot contend that they are liable to pay only the charge allowance payable for the additional duty of an officer deputed to supervise the distilleries. It is without noticing these aspects, Ext.P1 judgment and the judgment in W.P.(C) No.23356 of 2005 were passed and hence we hold that Ext.P1 judgment dated 26.05.2009 in W.P.(C) No.10459 of 2008 and the judgment dated 11.06.2012 in WP(C)No.23356 of 2005 do not reflect the correct position of law. So also, we hold that the impugned judgment passed by the learned Single Judge does not express the correct position of law and hence liable to be set aside.

In the result, these writ appeals are allowed by setting aside the impugned judgments passed by the learned Single Judge and the writ petitions stand dismissed.

sd/-

ANIL K.NARENDHAN, JUDGE

sd/-

MURALEE KRISHNA S., JUDGE

sks