M/ SA aonkar/Tilak

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.229 OF 2025

UNITED SPIRITS LTD.,

A company incorporated under the laws of India, having its registered office at UB Tower, #24, Vittal Mallya Road, Bengaluru 560 001, through its authorized representative Ms. Apoorva Choudhary Manager-Indirect Tax, 27 years, Indian National, resident of 168B, Room No.5468, Kannamwar Nagar, Vikhroli East, Mumbai 400083 duly authorized vide resolution dated 20/09/2024 .. **Petitioner**

Versus

1. Additional Commissioner of State Tax-II & Appellate Authority, South Goa

Having office at F Wing, 3rd Floor, Osia Arcade, near KTC Bus Stand, Margao-Goa 403 601

2. Commercial Tax Officer,

Ponda Ward, 1st and 2nd Floor, Abubakar Plaza, Opp. Jamia Masjid, Upper Bazaar, Ponda, Goa 403401

3. Commissioner of Commercial Taxes, Goa

Goa Rajya Kar Bhavan, Old I.P.H.B. Complex, Near office of the Chief Electoral Officer, Altinho, Panaji, Goa, India

4. State of Goa
through its Chief Secretary,
Having its office at Secretariat,
Porvorim-Goa.

5. Union of India,

Ministry of Finance, Department of Revenue, Through the Secretary (Revenue), North Block, New Delhi 110 001.	..	**Respondents**

Mr.Rohan Shah, Senior Advocate *with Mr.Mohammad Anajwalla, Ms.Eesha Dukle and Ms.Neha Shirodkar Advocates for the Petitioner.*

Mr.Devidas J. Pangam, Advocate General *with Mr.Shubham Priolkar, Additional Government Advocate for the State.*

Mr.Ayush Mittal (through VC) for Respondent No.3.

CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.

RESERVED ON : 22nd SEPTEMBER, 2025

PRONOUNCED ON : 23rd DECEMBER, 2025

JUDGMENT :- [Per Bharati Dangre, J.]

1. The Petition filed by United Spirits Limited, a company incorporated under the Indian Laws, seek the following reliefs.

> *"(A) issue a writ of declaration or a writ in the nature of declaration to the effect that-*
>
> *(i) the levy of interest under Section 25(4) of the GVAT Act, in respect of sales of Extra Neutral Alcohol(ENA)/Rectified Spirit (RS)/ High Bouquet Spirit (HBS) effected by the Petitioner, during FY 2019-20, is ultra vires the GVAT Act, and in violation of Articles 14, 265 and 300A of the Constitution of India; and*
>
> *(ii) the Impugned Order dated 29.01.2025 is arbitrary, inequitable, and contrary to Articles 14, 265 and 300A of the Constitution of India;*
>
> *(B) issue a writ of certiorari or a writ in the nature of certiorari to call for and examine the records of the proceedings before Respondents*

No.1 and 2, and quash and set aside the Impugned Order dated 29.01.2025.

(D) *issue a writ of prohibition or a writ in the nature of prohibition, prohibiting the Respondents or any of their Officers from-*

(i) imposing or collecting any interest on the payment of VAT made by the Petitioner, on sales of Extra Neutral Alcohol (ENA)/ Rectified Spirit (RS)/ High Bouquet Spirit (HBS) effected by it on or after 01.07.2017; and

(ii) acting on or in consequence of the Impugned Order dated 29.01.2025."

2. The aforesaid reliefs in the Petition is sought in the background facts, which are presented to us through the Petition and we would briefly refer to the same.

The Petitioner is engaged in the manufacture, import and export of alcoholic liquors including alcoholic beverages and High Bouquet Spirit (HBS)/Rectified Spirit (RS)/Extra Neutral Alcohol (ENA). HBS/RS/ENA are high concentration alcoholic spirits (94-96%), which are used in manufacture of 'alcoholic liquors for human consumption'.

The Petition is filed in the context of taxability of the above goods viz. ENA/HBS/RS during Financial Year 2019-20 and according to the Petitioner, it filed the Return for the year 2019-20, with the period of assessment from 01/04/2019 to 31/03/2020. However, the order of assessment passed under Section 29 of the Goa Value Added Tax Act, 2005 (for short, "**GVAT Act**") by the Assessing Authority, Ponda Ward dated 15/03/2023, imposed interest for late payment of the tax and the Assessment Order read thus:-

"Assessment Order

The assessment is for the period from 01-04-2019 to 31-03-2020, United Spirits Limited and is finalised under section 29 of the Goa Value Added Tax Act, 2005, duly authorized attended and is heard.

The dealer is manufacturer and exporter of liquor for human consumption and spirit.

The dealer has affected interstate sales as well as export sales. Hence assessment notice u/s 29 of the Goa Value Added Tax Act, 2005 was issued and sent to the registered place of business. None attended hence reminder was issued calling for assessment on 12/12/2022. Still none attended hence final reminder was issued calling for assessment on 15/02/2023. Dealer applied for adjournment of the hearing and accordingly the case was adjourned on 02/03/2023. Accordingly, Shri Rajendra Narvekar, A.R. of the dealer attended and finally heard on 08/03/2023.

The dealer has filed all returns within prescribed time period. Also dealer has filed revised returns for all quarters on 17/04/2022. Audit report is filed on 29/01/2021 which is on time. The dealer has submitted the declaration forms and tax payment details.

Upon verification of books of accounts, gross turnover is determined at Rs.1,10,95,39,183.00. Out of which turnover amounting to Rs.7,69,97,203.00 are direct exports which are duly supported by export document, turnover amounting to Rs.89,08,64,324.00 are interstate sales. Balance turnover of Rs.14,16,77,656.00 are local sale, Out of which Turnover of Rs.1,08,75,468.00 towards IMFL is held taxable @ 22% on which tax payable works out amounting to Rs.23,92,603.00 and turnover of Rs.13,08,02,188.00 is held taxable @12.5% towards HBS on which tax payable works out amounting to Rs.1,63,50,274.00. Interest of Rs.53,58,986/- is levied under section 25(4) of the GVAT Act, 2005 for late payment of tax. Accordingly, total of tax and interest works out amounting to Rs.2,41,01,863.00.

The dealer has furnished tax paid challans amounting to Rs.1,87,42,877.00. After adjusting tax paid by the dealer against tax liability balance amount of tax of Rs.53,58,986.00 are to be recovered by issue of demand notice.

Issued demand notice for Rs.53,58,986.00."

Pursuant thereto, a Demand Notice was issued to the Petitioner, directing it to pay the amount on or before 15/05/2023, failing which, it was directed that the same will be recovered as arrears of land revenue.

3. Being aggrieved by the said order, the Petitioner filed an Appeal before the Additional Deputy Commissioner of Commercial Taxes, disputing the interest liability of Rs.53,58,986/- on account of delayed payment of tax from April 2019 to March 2020. By submitting that the Appellant had already paid an amount of INR 5,35,898/- as pre-deposit and this value is computed as 10% of the disputed interest demanded in the Assessment Order, the specific ground in the Appeal pleaded that interest is compensatory in nature and is imposed on an assessee, who has withheld payment of any tax as and when it is 'due and payable' and the levy of interest is geared to actual amount of tax withheld and the extent of delay in paying the tax on the 'due date'. A ground was also raised that there was ambiguity on taxation of HBA/ENA under the GST or under VAT/CST law and reliance was placed upon the minutes of the GST Council, where this subject was debated as there was divergence of opinion regarding the constitutional powers of taxation of such goods and it was pleaded that the issue was not concluded. Therefore, the Appeal raised a ground that in absence of lack of clarity and consensus on the taxation of HBS/ENA, the appellant could not be said to have willfully withheld/delayed payment of tax, but the same was not paid only on account of lack of certainty.

Reliance was placed upon the decision of the Karnataka High Court in ***M/s Abhay Solvents Pvt. Ltd. Vs. Assistant Commissioner of Commercial Taxes*** as well as the decision in ***M/s Birla Cement Works & J.K.Synthetics Ltd. Vs. Commercial Taxes Officer***. The Appeal, therefore, sought dropping of the demand of interest, as the tax was correctly and appropriately computed and paid by the appellant and the demand of interest levied in the impugned order was prayed to be kept in abeyance.

4. The Appeal preferred by the Petitioner (appellant) under Section 35 of the GVAT Act, however, was dismissed by upholding the VAT Assessment Order of the Commercial Tax Officer, Ponda, with the following conclusion being recorded.

> *"Once registered under the Goa VAT Act, the Appellant is duty-bound to levy and collect tax on the sale of taxable goods or commodities from buyers and remit such tax to the Government treasury within the prescribed time limit, as per the provisions of Section 25, read with Rule 24 of the Goa VAT Act, 2005, and the rules made thereunder. Therefore, the dealer's contention that no tax was collected from the buyers, and thus interest is not applicable for the delay in payment, cannot be accepted.*
>
> *The Assessing Authority has rightly levied interest at 18%, amounting to Rs.53,58,986/-, in accordance with the provisions of Section 25(4) of the Goa VAT Act, 2005, and Rule 24 of the Goa VAT Rules, 2005. Therefore, intervention by this Authority is unwarranted. Consequently, the Appellant/Dealer's contention that the interest levy of Rs.53,58,986/- is not applicable due to ambiguity and lack of clarity regarding the taxation of HBS/ENA is not considered.*

The decision relied by the Appellant are not applicable in the present case. It is settled law that a judicial precedent cannot be interpreted as a statute and can be applied only if it relates to similar facts and circumstances or where the provisions of law sought to be interpreted are pari materia.

In view of the above facts, discussion and for the above recorded reasons, I pass the following;

ORDER

The Appeal is hereby Dismissed. The Impugned VAT Assessment Order No.30210202998/6620 dated 15/03/2023 issued by the Commercial Tax Officer, Ponda Ward, Ponda-Goa is upheld.

The Appropriate Assessing Authority shall adjust the payment of the 10% pre-deposit made towards the disputed amount and initiate recovery proceedings for the remaining outstanding dues against the Appellant/Dealer, in accordance with the provisions of the Goa VAT Act, 2005, and the Rules made thereunder.

The Appeal & Stay application stands disposed off according.

Proceedings closed."

5. It is in this factual background, the present Petition is filed calling in question the impugned order dated 29/01/2025 and we have heard learned senior counsel Mr.Rohan Shah for the Petitioner.

According to Mr.Shah, it is in the wake of the uncertainty prevailing pursuant to the introduction of goods and service tax w.e.f. 01/07/2017, under which the taxing jurisdiction for sale of goods by the Union and the States was subsumed to the extent of taxation of supplies of goods and services, which was then taxed simultaneously under the GST law. It is his submission that in consonance with the amended constitutional scheme by introduction of Article 246A read with Article 366(12A), which kept the supplies of 'alcoholic liquor for human consumption' out of the ambit of levy of GST and amendment in the provisions of GVAT Act w.e.f. 01/07/2017 by including 'alcoholic liquor for human consumption' in the definition of 'goods' under Section 2(p) of the GVAT Act and specific entry for levy of VAT on 'restricted spirit' under Sr.No.11 of Schedule 'C' of the GVAT Act, being omitted, there arose some difficulties. It is also submitted by him that since 'alcoholic liquor for human consumption' was kept outside the ambit of GST and continued to be made liable under VAT/CST, the issue arose as regards the taxability of HBS/RS/ENA, being whether it would constitute 'alcoholic liquor for human consumption' and would be leviable to VAT/CST and if it do not so constitute, then whether it can be subjected to GST.

Inviting our attention to the meetings of the GST Council as well as the opinion of the learned Attorney General, to the effect that since ENA was not fit for human consumption, the State did not have the authority to tax sales of ENA to VAT, it is the submission of Mr.Shah that there was complete uncertainty in this regard. He would invite our attention to the decision of the Allahabad High Court in ***Jain Distillery Pvt. Ltd. Vs.State of U.P.***, where the VAT notification issued by the State of U.P. prescribing the rate of VAT levied on sale of ENA was struck down by holding that the State

Government did not possess legislative competence to tax the sale of ENA under VAT law after introduction of GST w.e.f. 01/07/2017.

A challenge to this decision, according to Mr.Shah, is pending before the Apex Court alongwith other connected SLPs. As per Mr.Shah, the clarity emerged on the issue only when Section 9(1) of the CGST Act was amended to expressly exclude supplies of undenatured ENA and Rectified Spirit from the scope and ambit of the GST was inserted vide Section 114 of the Finance Act, 2024 which came into effect prospectively w.e.f. 01/11/2024.

6. In short, relying upon the aforesaid chronology of events, it is the submission of Mr.Shah that issue of taxability of HBS/RS/ENA used in manufacture of alcoholic beverages under VAT law was subject matter of ambiguity with introduction of GST regime in 2017 and this conundrum was only resolved on 01/11/2024, with amendment to the CGST/GST Act. In the wake of the aforesaid, the Petitioner filed quarterly returns under GVAT Act solely on sale of Indian Made Foreign Liquor (IMFL) and not on sale of HBS/RS/ENA and for the year 2019-20, according to Mr.Shah, the Petitioner filed audit report in form of XV, disclosing the sale of IMFL and the tax paid thereon. Further, the Petitioner, by way of abundant precaution also paid the corresponding VAT thereon and the differential tax amount of Rs.1,63,50,273/- was paid on 30/09/2021, though the amount of VAT was not collected from the buyers of ENA and it was borne by the Petitioner out of its own pocket.

Despite this caution being exercised, it is the grievance of the Petitioner that the Assessing Officer passed an Assessment Order on 15/03/2023, appropriating the amount of differential VAT paid and confirming the demand of interest of Rs.53,58,986/- under Section 25(4) of the GVAT Act and this gave rise to the Appeal and the resultant impugned order dated 29/01/2025 passed by the Additional Commissioner of Sales Tax, thereby upholding the order passed by the Assessing Authority.

7. Contesting the claim in the Petition, we have heard learned Advocate General Mr.Devidas Pangam, representing the State, who has placed before us the list of dates and events. According to him, 'Rectified Spirit and High Bouquet Spirit' were listed at item No. 11 of Schedule 'C' to the GVAT Act attracting VAT at the rate of 20% on its sale. He would submit that on 30/06/2017, the above entry was deleted from Schedule 'C' and items not covered under GST Act and not specified in any Schedule of the VAT, were liable to VAT at the rate of 12.5% under Section 5(1)(e) of the VAT Act and thus, HBS/ENA become liable to VAT at 12.5%.

It is from 01/07/2017, the Goods and Services Tax came into force and according to Mr.Pangam, in the 20th GST Council meeting held on 05/08/2017, it was decided that until an opinion is obtained from learned Attorney General of India, the status-quo be maintained i.e. ENA supplied for industrial purpose shall attract GST at the rate of 18%. He would submit that the Petitioner collected VAT but did not pay the same and retained it and in fact, there was no confusion, as he continued to collect VAT and even he filed Quarterly Return, but did not pay tax, as he filed Return showing 'zero' VAT, despite the fact that he had collected it.

According to Mr.Pangam, the time to file the Revised Return for the years 2017-18 expired on 30/04/2019, when the Petitioner filed Quarterly Return for the year 2018-19 as mandated under GVAT Act and in the Return, Petitioner claimed that no VAT was payable and declared VAT liability as 'zero'. Again the time to file the Revised Return for the year 2018-10 expired on 30/04/2020, when the Petitioner filed Quarterly Return for 2019-20, where he assessed his liability at Rs.23,92,503/- and paid the amount. Even in this Return, according to Mr.Pangam, the Petitioner claimed that no VAT was payable on HBS/ENA and declared liability as 'zero'. The time to file Revised Return for year 2019-20 expired on 30/04/2021.

It is the submission of Mr.Pangam that the Assessing Authority under the GVAT Act passed Assessment Order for the year 2017-18 under Section 29 of the Act and recorded the contention on behalf of the Petitioner that the sale of HBS was not liable to VAT, after the implementation of GST w.e.f. 01/07/2017 and, particularly, when item No.11 was omitted from Schedule 'C' of VAT Act. However, this submission of the Petitioner was found to be erroneous, as the Petitioner has made local sales of HBS after the implementation of GST on 01/07/2017 on which it charged and collected VAT at the rate of 20% and the purchaser-M/s Mandovi Distilleries and Breweries availed Input Tax Credit (ITC) on the VAT paid to the Petitioner. On account of this order passed on 29/07/2021, the Petitioner paid an amount of Rs.1,63,50,274/- towards its VAT liability for the year 2019-20 and did not file any appeal against the said order. However, on 17/04/2022, the Petitioner filed Revised Returns for the F.Y. 2019-20, but according to Mr.Pangam, the purported Returns have no legal efficacy, as the time to file such Revised Returns had already expired in terms of Section 24 of the Act. Therefore, according to him, the Assessment Order was issued by the Assessing Authority for the year 2019-20 under Section 29 and he was directed to pay the interest for late payment of VAT for the year 2019-20 as contemplated under Section 25(4) of the Act.

8. Mr.Pangam has placed before us the Order of Assessment passed under Section 29 of the GVAT Act, which has recorded that the dealer had effected local sales, which were taxable at the rate of 22%, with a clarification that VAT chargeable on local sale of spirits is 20% upto 30/06/2017 and 12.5% thereafter.

Mr.Pangam, by inviting our attention to Section 25(4)(a) would submit that the said provision is attracted whenever a dealer has not filed any Return and the tax is due as per the Books of the dealer and the dealer has not made any payment. The provision is also attracted when the tax is due as per the Revised Returns and the dealer has not made payment or when the tax is due as per Returns and part payment of the tax is done by the dealer and even when tax is due as per the Revised Returns and only part payment of the tax is done by the dealer and this would invite an interest at the rate of 18% from the date when such tax becomes payable.

The learned Advocate General has placed reliance upon the decision of the Constitution Bench in the case of ***State of U.P. & Ors. Vs. M/s Lalta Prasad Vaish & Sons***[1], which has marked the distinction between potable and non-potable alcohol and the use of the common term 'Industrial Alcohol', which are considered to be variants of ethanol, used in various industrial preparations. The said decision, according to Mr.Pangam, has clarified that while ENA is

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usually used for preparation of alcoholic beverages, Rectified Spirit is also used to prepare certain alcoholic beverages and denaturation is the process by which the ethanol is deliberately made undrinkable by adding chemicals to make it poisonous or foul smelling, so that it is unsuited for consumption by humans. With reference to the issue formulated as to whether the expression ‘intoxicating liquors’ in Entry 8 of List II of Seventh Schedule to the Constitution includes alcohol other than quotable alcohol, Mr.Pangam has invited our attention to the conclusions drawn to the following effect :-

> “a. Entry 8 of List II of the Seventh Schedule to the Constitution is both an industry-based entry and a product-based entry. The words that follow the expression “that is to say” in the Entry are not exhaustive of its contents. It includes the regulation of everything from the raw materials to the consumption of ‘intoxicating liquor’;
>
> b. Parliament cannot occupy the field of the entire industry merely by issuing a declaration under Entry 52 of List I. The State Legislature’s competence under Entry 24 of List II is denuded only to the extent of the field covered by the law of Parliament under Entry 52 of List I;
>
> c. Parliament does not have the legislative competence to enact a law taking control of the industry of intoxicating liquor covered by Entry 8 of List II in exercise of the power under Article 246 read with Entry 52 of List I;
>
> d. The judgments of the Bombay High Court in FN Balsara v. State of Bombay (supra), this Court in FN Balsara (supra) and Southern Pharmaceuticals (supra) did not limit the meaning of the expression ‘intoxicating liquor’ to its popular meaning, that is, alcoholic beverages that produce intoxication. All the three judgments interpreted the expression to cover alcohol that could be noxiously used to the detriment of health;
>
> e. The expression ‘intoxicating liquor’ in Entry 8 has not acquired a legislative meaning on an application of the test laid down in Ganon Dunkerley (supra);
>
> f. The study of the evolution of the legislative entries on alcohol indicates that the use of the expressions “intoxicating liquor” and “alcoholic liquor for human consumption” in the Seventh Schedule to the Constitution was a matter well-thought of. It also indicates that the members of the

> Constituent Assembly were aware of use of the variants of alcohol as a raw material in the production of multiple products;
>
> g. Entry 8 of List II is based on public interest. It seeks to enhance the scope of the entry beyond potable alcohol. This is inferable from the use of the phrase 'intoxicating' and other accompanying words in the Entry. Alcohol is inherently a noxious substance that is prone to misuse affecting public health at large. Entry 8 covers alcohol that could be used noxiously to the detriment of public health. This includes alcohol such as rectified spirit, ENA and denatured spirit which are used as raw materials in the production of potable alcohol and other products. However, it does not include the final product (such as a hand sanitiser) that contains alcohol since such an interpretation will substantially diminish the scope of other legislative entries;"

9. Since the central issue that arises for consideration in the present proceedings is, whether the Petitioner could have been levied with interest at 18% in accordance with the provisions of Section 25(4) of GVAT Act and Rule 24 of the GVAT Rules, 2005 on account of the delay in payment, in the wake of the argument of Mr.Shah that on account of the ambiguity and lack of clarity, there was a delay in payment of the tax.

At the outset, it would be necessary to refer to the relevant provisions of the Goa Value Added Tax Act, 2005, an enactment relating to the levy and collection of Value Added Tax on sales of goods in the State of Goa.

The Act defines "goods" to mean all kinds of movable property (other than newspapers), including livestock, all materials, commodities, grass or things attached to or forming part of the earth, which are agreed to be severed before sale and property in goods involved in execution of works contract etc., but did not include actionable claims, stocks, shares and securities.

Section 3 of the said Act prescribes for the Incidence of Tax on every dealer, whose turnover of all sales made during the preceding year exceeded the relevant limits specified in sub-section (4), who shall be liable to pay tax under the Act on the turnover of sales, made on or after the appointed date. Section 5 of the Act prescribe for levy of Value Added Tax on the Goods specified in the Schedule at the rates shown against the entry, so specified, with the power being conferred on the Government to reduce or enhance any rate of tax by notification in the official gazette.

Chapter V of the Act is a provision regarding Returns and payment of tax and make it imperative for every registered dealer to file a Return as prescribed by such date and such authority as prescribed. Sub-section (3) of Section 24 permit furnishing of Revised Return, if any Dealer having furnished Return under sub-section (1) of Section 24, discovers any omission or incorrect statement therein and such Revised Return can be filed at any time before a notice of assessment is served upon him, in respect of the period covered by the said return or before expiry of one year following the last date prescribed for furnishing the said return, whichever is earlier.

Sub-section (4) of Section 24 reads thus :-

"Any return filed under sub-section (1), without proper payment of tax as due, shall not be considered as a return filed under the provisions of this Act and therefore shall be liable for penalty."

Section 25 is a provision for 'Payment of Tax' and since, we are concerned with sub-section (4), we deem it appropriate to reproduce the same:-

"25(4)(a) Wherever a dealer has not filed any return and tax is due, as per the books of the dealer, or as assessed or re-assessed, under the provisions of this Act or the tax is due as per the returns or revised returns furnished without any payment or part payment of tax by the dealer, then such dealer shall be liable to pay interest @ 18% per annum or at such rate as may be notified by the Government from time to time, from the date such tax have become payable.

(b) (i) The amount of tax due as per any order passed under any provision of this Act, for any period less any sum already paid in respect of the said period; and

(ii) the amount of interest or penalty or both, if any, levied under any provision of this Act;

and

(iii) the sum, if any, forfeited and the amount of fine, if any, imposed under the Act or rules;

and

(iv) any other amount due under this Act,

shall be paid by the person or dealer or the person liable thereof into the Government treasury or notified Bank within thirty days from the date of service of the notice issued by the Commissioner in respect thereof:

Provided that, the Commissioner may, in respect of any particular dealer or person, and for reasons to be recorded in writing, allow him to pay the tax, penalty, interest or the sum forfeited, in instalments. The grant of this facility to pay tax in instalments shall be without prejudice to the other provisions of this Act including levy of penalty, interest, or both.

Provided further that, subject to the rules made in this behalf, the Commissioner may at the request of the dealer or person and after obtaining prior approval of the Government, remit the part of the penalty and/or interest, not exceeding fifty percent thereof, payable by such dealer or person."

By virtue of sub-section (5), any tax, penalty, interest, fine or sum forfeited, which remains unpaid after the service of notice under sub-section (4), or any instalment not duly paid, is liable to be recoverable as an arrear of land revenue.

10. Under the statutory scheme of Goa Value Added Tax, levy of VAT on goods specified in the Schedule is set out in Section 5, by providing that there shall be levy of Value Added Tax (output tax) on the turnover of sale of goods at rates specified in the Schedule i.e. Schedule-A to Schedule C, at the rate specified in each of the entry in the Schedule, whereas goods specified in Schedule D are exempted from tax. As per clause (c) in case of any other goods, the levy is at the rate of 12 ½ paisa in a rupee. Schedule-C, included entry no.11 as 'Rectified Spirit and High Bouquet Spirit, a HBS and the rate of tax prescribed is 20%.

With the amendment introduced in the Constitution in form of Section 246-A introducing special provision with respect to goods and services tax, by 101st Amendment with effect from 16/9/2016, the Parliament was vested with the exclusive power to make laws with respect to goods and services tax, where the supply of goods or services or both, take place in the course of inter-state trade or commerce. However, the said provision is also introduced with an explanation which provided that the said provision in respect of goods and services referred to in clause (5) of Article 279-A, take effect from the date recommended by Goods and Service Tax Council.

The term 'Goods" under the Goa VAT Act, 2005 in Section 2(p) define goods to mean (i) petroleum crude, (ii) high spirit diesel, (iii) motor spirit (iv) natural gas, (v) aviation turbine fuel and (v) Alcoholic liquor for human consumption.

11. Pursuant to the Amendment in the Constitution, by notification issued on 30/6/2017, in exercise of power conferred by sub-section (4) of Section 5 of the Goa Value Added Tax, 2005 and other power enabling, the Government of Goa amended Schedule A, B, C, D and G, and as far as Schedule C is concerned, for the existing entries against Serial nos.1 to 7, the entries were substituted, which included foreign liquor and beer and Indian made foreign liquor including beer under Goa Excise Duty Act, 1964, to be made taxable @ 22 %.

By the said notification, the existing entries against Serial nos. (8) to (28) were omitted and this included entry no.11 i.e. the entry Rectified Spirit and High Bouquet Spirit. Thus, though the aforesaid entry was omitted from Schedule-C, which had a levy of 22% of tax, by virtue of Section 5(1)(e), in case of goods other than one specified in (a), (b), (c), where the rates were specified as against the entry in case of other goods, the levy is continued @ 12 ½ %.

12. It is in the aforesaid scenario, it can be seen that upto 30/6/2017, Rectified Spirit and High Bouquets Spirit" were listed at item no.11 of Schedule 'C' to the Goa Value Added Tax 2005, attracting VAT @ 20% on their sale. After 30/6/2017, this entry was deleted from GVAT Act, 2005 and it is pertinent to note that though the entry was removed from Schedule 'C', it was liable for imposition of VAT at 12.5%, as it was not covered under the Schedule and the levy would be as per Section 5(1)(e) of the GVAT Act. It is clear that since the goods were not covered under the GST Act, unless and until it was so notified by the GST Council, it cannot happen that they will not be subjected to either VAT or GST.

It is pointed out to us by the learned Advocate General that all the while the petitioner collected VAT, but he did not pay the same to Government, but retained it. It can be seen that even though entry no.11 was deleted from Schedule 'C', unless and until it was subjected to GST, it still fell within the regime of GVAT Act and was liable to VAT at 12.5% as per Section 5(1)(e) after 01/07/2017, when the goods and services tax came into force.

13. It is pertinent to note that the petitioner had approached the High Court, raising a challenge to the insistence of the Respondent, furnishing of an undertaking concerning payment of all taxes, interest and penalty, in case the GST Council ultimately decided the Extra Neutral Alcohol (ENA) is a commodity covered under the Goods and Services Act (GST) law, as a pre-condition for issuance of 'C' and 'F' forms, under the provisions of Central Sales Tax Act, 1956 and Rules made thereunder.

It was the specific contention of the petitioner that it had fulfilled the necessary terms and conditions prescribed under the CST Act, entitling it to C & F forms, and since in the Act or the Rules, there is no provision of such an undertaking, the impugned direction contained in the Memorandum dated 21/4/2021 (OM) and the impugned undertaking, in the format appended to the OM, was prayed to be ultra-vires.

14. The contention advanced oo behalf of the petitioner was specifically recorded as below:-

> "Mr.Shah contended that the OM dated 21/4/2021 has itself clarified that the ENA used for the manufacture of alcohol for human consumption is to be assessed under the Goa VAT Act, and therefore, at this stage, it is not even open to the respondents to contend that such ENA is covered under the GST Regime."

Opposing the said contention, the Advocate General urged that mere fact that the State of Goa and other States had agreed to, and were implementing the adhoc arrangement spelt out in the minutes of GST Council, only means and imply that the State in its executive capacity had agreed to treat the commodity as covered under CST regime as opposed to GST regime, and therefore, in exercise of the executive power, the State was entitled to insist of an undertaking as a pre-condition for treating ENA as covered under Goa VAT or the CST regime. In addition, the submission of the learned Advocate General was specifically recorded as below :-

> "15. Learned Advocate General also submitted that no prejudice whatsoever was demonstrated by the petitioners in these matters. He submitted that subject to fulfillment of requirements under the CST Act and the Rules made thereunder, the State was not at all averse to issuing the "C and F Forms" provided the petitioners were to furnish the undertaking appended to the OM dated 21/04/2021. He submitted that such an undertaking would operate only in the eventuality the GST Council were to decide that the said commodity would be covered under the GST regime but not otherwise. He submitted that if such a decision is taken by the GST Council and accepted by the Central Government, then, the State Government also stands to earn a portion of such taxes so recovered. Therefore, if the State takes reasonable measures in its executive capacity to safeguard its interest in the matters of recovery of such taxes, such an executive action does not attract the doctrine of ultra vires or unreasonableness."

15. The Office Memorandum, issuing a clarification regarding taxability of Undenatured, Ethyl alcohol of any alcoholic strength (including neutral and extra-neutral alcohol) when used in production of alcoholic liquors for human consumption was the subject matter of the proceedings.

The Memorandum was issued pending the decision of the GST Council and it clarified thus :-

"Office Memorandum

Subject : Clarification regarding taxability of of Undenatured ethyl alcohol of any alcoholic strength (including neutral and extra neutral alcohol) when used in the production of alcoholic liquors for human consumption"

In view of various representations received by the Government and this office on the subject of issuing "C" forms for interstate purchase of Extra Neutral Alcohol (ENA) when used in manufacturing of Alcoholic Liquor for Human Consumption (Hereinafter referred to as 'said commodity') clarification was sought from Government on the matter.

In view of this, Government has clarified that pending the GST Council decision the said commodity is to be considered as taxable under section 5(1)(e) of Goa Value Added Tax 2005 (hereinafter referred to as 'said Act') and hence all statutory forms may be issued by the Assessing Authorities as per the provisions of the said Act.

It is further directed that since the matter is under consideration with GST Council, all statutory forms for said commodity shall be issued only after obtaining an undertaking from the applicant taxpayer in the given format enclosed herewith.

UNDERTAKING

I/We.............. Proprietor/Partner(s)/Manager/ Director/Karta of HUF/Principal Officer managing the business/Society of ..... registered vide Tax Identification No. .... under Goa Value Added Tax Act, 2005, do hereby undertake that, in case the GST Council decides that ENA is a commodity covered under Goods and Services Tax law, all the taxes, interest and penalty arising due to such decision would be paid me/us to the Government"

16. Taking note of the Scheme of the CST Act, 1956, along with the Rules and the Goa Rules, 1973, which contemplate that a dealer who, in the course of inter-State trade or commerce sell to a registered dealer the goods as defined in Section 2(d) of the CST Act, shall be liable to pay tax which shall be 2% of the turnover, or at the rate applicable to sale or purchase of such goods inside the appropriate State under the Sales Tax law of the State, whichever is lower. This convey that the dealer in the origin State would have to normally pay tax at the rate of 2% of his turnover unless the rate of such tax is lower. In the destination State, however, the dealer will have to pay full tax as may be prescribed in the destination State, in the event of the Sale taking place in such destination State. With reference to Section 8 of the CST Act, referrable to 'C' form, it was noted that upon such form being submitted to the origin State, it is not permitted to levy any further tax upon such goods, but if no such form is submitted by the dealer to the origin State, then the origin State is entitled to recover full tax from such dealer.

It is in the existence of the aforesaid scheme, the Court was also called upon to determine the issue whether inter State and Commerce of ENA would be covered under the GST regime and the IGST Act, 2017, by referring to the decision of M/s. Synthetics and Chemicals Vs. State of U.P, AIR 1990 SC 1927, and also the decision in State of U.P Vs. Modi Distilleries,1 to submit that ENA per-se cannot be regarded as Alcohol for human consumption and unless the petitioners established that they were legitimately excluded from GST Regime and covered under the CST or VAT regime, the petitioners could not even insist on issuance of C or F form.

However, it was clearly expressed by the Division Bench that it is not open for the State Government to raise the above plea, as the

State representative is also party to the deliberations of the GST Council, which has decided to continue with the status quo about the said commodity i.e. it shall not be covered under the GST Regime and State of Goa has accepted the aforesaid arrangement and also issued O.M on 21/4/2021 itself.

17. Recording that this issue is pending before consideration of GST Council and the State of Goa has excluded ENA from GST regime, and have agreed to apply CST or VAT regime to ENA, the question was determined by the Court, whether the State is entitled to impose a condition which is not covered by the statute or the rules and it was answered in the negative, by declaring that the impugned direction and the impugned undertaking are ultra-vires as the CST Act/Rules, do not cover any such stipulation.

18. From the aforesaid decision delivered on the petitioner approaching the High Court, it is clear that the petitioner, all the while, was conscious of the fact that the goods in which it was trading, are in the VAT regime and is not yet in the GST regime. Even the Division Bench recorded that this issue was pending consideration of the GST Council and, as far as the State of Goa is concerned, it has excluded ENA from GST regime and continued it under the CST or VAT regime. With the notification issued on 30/6/2017 by the Government of Goa amending the Schedule, in

Schedule 'C', certain entries were added and existing entries from Serial nos.8 to 28 were omitted, thereby deleting entry no.11 also.

19. Being conscious of the aforesaid background, the petitioner himself invited the order from the Division Bench in Writ Petition No.2290 of 2021 on 4/3/2022.

On 4/3/2022, the petitioner filed quarterly returns for the year 2017-18 in April 2018 as mandated under the VAT Act, but claimed that no VAT was payable on HBS/ENA and declared VAT liability as 'zero'. The time to file revised return for the year 2017-18 expired on 30/4/2019.

Once again, the petitioner filed quarterly return from 2018-2019 claiming that no VAT was payable and declared VAT liability as 'zero'. The time to file revised return for the said financial year expired on 30/4/2020. In April 2020, the petitioner once again filed quarterly return for 2019-20 and this time, he assessed his VAT liability at Rs.23,92,503/- and paid the tax amount to the Government. Even in these returns, the petitioner claimed that no VAT was payable and declared the VAT liability as 'zero'. Time to file the revised return for 2019-20 expired on 30/4/2021.

The Assessing Authority under the GVAT Act passed an assessment order under Section 29, on 29/7/2021, and the contention of the petitioner that sale of HBS was not liable to VAT in the GST regime with effect from 01/07/2017, in case of item no.11 having been omitted from Schedule 'C' was recorded, but the Assessment Order found that the Petitioner had made local sale of HBS to M/s.Mandovi Distilleries and Breweries in the GST Regime and on this, the Petitioner had charged and collected VAT at 20% and even Mandovi Distilleries had availed Input Tax Credit (ITC) on the VAT paid to the petitioner. The petitioner accordingly, admitted the liability and paid VAT and did not challenge the said order. The petitioner paid an amount of Rs.1,63,50,274/- towards VAT liability in the year 2019-2020 for the sale of HBS but this was paid on 30/9/2021.

20. On 17/4/2022, the petitioner filed revised returns for financial year 2019-2020, which was much beyond the prescribed period under Section 24, and the purported return had no legal efficacy, as it was filed after the time to file revised return, had already expired.

On this return, an order of assessment was passed under Section 29 of the GVAT Act on 15/3/2023 and this was for the assessment from 1/4/2019 to 31/3/2020, on the turnover of Rs.11,09,539,183/-. The sale price of the goods which were sold in the inter State trade or commerce and those in the course of import of goods into, or export of goods out of the territory of India, were assessed at Rs.890,864,324/- and Rs.769,97,203/- respectively.

Based on the aforesaid figures, the amount of Output Tax payable at two rates i.e. 12.5 % and 22% was computed as Rs.187,42,877/- along with penalty of Rs.53,58,986/-.

The total of output tax penalty and interest payable came to be computed at Rs.24,101,863/- and by deducting the tax paid with returns, the balance Rs.53,58,986/- was levied as interest.

The Assessment order for which the period from 1/4/2019 to 31/3/2020 was finally fixed under Section 29 of the Goa VAT Act, 2005 recorded that the dealer had filed returns and also filed revised returns for all quarters. It was further recorded that the returns, revised returns and audit report were filed on time. The assessment order based upon the returns and verification of books of account recorded the gross turnover and also referred to the turnover in form of direct exports duly supported by export document, whereas a figure was also mentioned as 'turnover in form of inter State sales'.

Balance turnover of Rs.14,16,17,656/- was described as local sale out of which IMFL was held taxable @ 22%, whereas the balance was held taxable @ 12.5% as it was towards HBS, on which tax payable was worked out at Rs.1,63,50,274/-. Interest as per sub-section (4) of Section 25 at the rate 18% was levied thereunder, for late payment of tax and this was computed at Rs.53,58,986/-. Since the dealer had already furnished the tax challans for the amount of tax, he was only held liable for the payment of interest and demand notice was issued for the same.

This order is upheld in Appeal when the Appeal by the assessee was dismissed on 29/1/2025.

The Appellate Authority also relied upon the return filed, the revised return filed and expressed that the tax was due as per the return/revised returns, without part-payment and it was held that if the amount which was due but not payable within the prescribed time limit, it must invite an interest.

The Appellate Authority also rendered a finding that Output Tax payable on sale of IMFL was charged under 22% as per Entry no.5, and the spirits were charged as 12.5% being the residuary entry.

21. It is to be noted that the appellant had already made a payment of Rs.23,92,604/- for the liability of May 2019 which was within prescribed time limit. However, from April 2019 to March 2020, the tax paid was not within the prescribed time-line and the second payment of Rs.1,63,50,273/- dated 30/9/2021 was delayed and interest is charged on the same, as its payment on 30/9/2021 was beyond prescribed time limit.

22. The submission of the learned Senior counsel Mr.Shah that there was uncertainty prevailing as regards whether the goods were liable for levy of VAT or GST, and therefore, there was a delay in payment, has failed to appeal us. One thing is clear that for the goods which were dealt with, by the petitioner as a dealer, they are either liable for levy, either for GST or VAT, and in the present case, the payment of VAT is made in 2022, though it was due in 2019. As far as the previous period of assessment i.e. 1/4/2017 from 31/3/2018, when the dealer was assessed u/s.29, based on the quarterly returns, which were filed within the prescribed time limit, though audit report was not filed, the Assessing Authority on verification of books of accounts, such as profit and loss account, balance sheet, audit report etc. arrived at gross turnover of sales, which was found to be below the turnover shown in the quarterly returns. The difference in the sale was noted to be on account of the fact that the amount was disclosed in export as well as in sales and the same was verified along with invoices and the duplicate entries were segregated.

Recording that there was total export of Rs.82,91,33,990/- which was allowed for deduction from gross turnover after verifying the shipping bills and other documents, the total taxable turnover was assessed at Rs.24,69,909,964/-. The order of the Assessing Officer clearly made it known to the dealer that the spirits are liable to tax at 12.5% in terms of Section 5(1)(e) of the Act and this is so indicated in the order of the Assessing Authority in the following words :-

> "As per the decision of GST Council in respect of spirits including HBS, ENA : status quo has to be maintained post implementation of GST meaning which they shall continue under the VAT/CST levy post implementation of GST w.e.f. 01/07/2017. It is in accordance with this decision that the dealer applied and issued form F2 for the branch transfer inward after 01/07/2017. Hence, it is settled that these goods are liable for levy of VAT/CST even after implementation of GST. The second issue needs to be decided is regarding the rates of tax on spirits under VAT/CST Act. It is true that there existed an entry 11 Rectified Spirits with tax rate as 20% upto 30/06/2017 which was omitted w.e.f. 01/07/2017. Omission of the said entry after 01/07/2017 automatically makes the spirits liable to tax @ 12.5% in terms of section 5(1)(e) of the Act. Thus, from the above, it is crystal clear that the VAT chargeable on local sale of spirits is 20% upto 30/06/2017 and 12.5% thereafter."

There is no dispute that this order was complied by the petitioner and no Appeal was filed. This order has therefore, attained finality. The Petitioner, who is a Dealer, was aware of it being liable for paying the VAT and has accordingly, filed return and though revised return is filed beyond the prescribed timeline, the contingency stipulated in sub-section (4) of Section 25 has clearly emerged as Section 25(4)(a) make a dealer liable for tax, when a dealer has filed return, but not made payment or even when he makes part payment, and in such case, the tax become payable @ 18%.

True it is, then there was some conundrum about whether the goods in which the Petitioner is dealing, cannot be subjected to GST or VAT, but in the wake of the notification issued on 30/6/2017, as far as State of Goa is concerned, which omitted entry no.11 from Schedule 'C', made it evidently clear that if it is subjected to VAT/CST, then it must fall within the domain of State. In any case, the petitioner was conscious of the fact that even after the VAT regime coming into force, he is liable to make payment of VAT and therefore, he approached this Court raising a challenge to the condition in the Office Memorandum, that an undertaking shall be given by the dealer before issuance of Form 'C' that he will pay GST, if at all it is held that the goods are subject to payment of GST. We do not see that the petitioner had any doubt about the fact that the goods are being charged under the VAT Act, and as per Section 25, a registered dealer furnishing returns under sub-section (2) of Section 24 shall pay the amount of taxes due from him after adjusting the amount of tax covered by the certificate of Tax Deduction at Source, if for the period covered by a return, which is required to file under the Rules, along with the amount of penalty, interest and any other sum payable.

23. Sub-section (4) of Section 25 contemplate a contingency of imposition of interest @ 18% p.a, if there is a failure to file return and taxes due, or even if the tax is due as per the returns or revised returns, but not paid.

The learned Advocate General has also placed reliance upon sub-rule (4) of Rule 24 of the Goa VAT Act, 2005 which reads thus :-

> "(4) Where any registered dealer submits the return in the prescribed form without a copy of the e-challan for having paid tax due or with payment of tax lesser than what is due, the Appropriate Assessing Authority shall issue a notice in Form VAT-VI to the registered dealer for the tax not paid. Such notice shall be deemed to be a demand notice and the registered dealer shall pay the said amount demanded within thirty days from the date of service of such notice alongwith the interest for delayed payment at the rate provided in clause (a) of sub-section (4) of section 25."

24. In light of the aforesaid, though we do not dispute that there was some uncertainty as regards the levy to be imposed, but since we find that the petitioner was conscious of the controversy and chose to file return and also collected VAT, definitely, the Government had to suffer because the VAT collected was not repaid to it and there is a delay.

When we specifically inquired as to what was the need for filing revised return, Mr. Shah has urged that he is unable to explain the same and therefore, we proceeded on a footing that the return was filed in time, but the liability and the VAT was shown to be 'zero'. As soon as the return is filed, as per Rule 24, the tax became payable within 20 days from the expiry of each month as per Rule 24 of sub-section (1), and as per sub-section (2), having a monthly tax liability, the payment shall be made within 30 days of expiry of each month.

As per sub-rule (3) of Rule 24, all payments of tax or any other amount under the Act, shall be made by an e-challan and the dealer shall have the option to effect the payment, either through cash mode or through cyber-treasury or through any electronic system available. Whenever the return is submitted without a copy of e-challan for having paid due or lesser payment of what is due, the Assessing Authority shall issue a notice to the registered dealer for the tax not paid and that is deemed to be a demand notice and within receipt of 30 days, the tax shall be paid along with interest for delayed payment as per the rate provided in clause (a) of sub-section (4) of Section 25.

25. In light of the existing aforesaid provisions, we find that the tax is due on 28th of every month and when return is filed, the Government is not unjustified in saying that the payment of tax must come at the relevant time and if the payment comes after the expiry of the period prescribed, then Government has every right to levy interest. The Petitioner admittedly filed Return/Revised Return, but did not pay the tax and thus, according to us, there is no return in the eyes of law and though the tax has come to the Government belatedly, the interest is leviable.

We also do not find that because of the uncertainty prevailing, the VAT was not paid, as for the first quarter, the petitioner has paid VAT, but claimed benefit of the uncertainty only for the period in the second tranche. In any case, the petitioner must be conscious of the fact that if it is not paying GST, then the goods must invite VAT and we are specifically informed that the VAT was collected, we see no difficulty why it was not deposited with the Government and in the return, it was shown to be 'zero'.

We, therefore, do not agree with the submission of Mr.Shah that on account of uncertainty, the tax is not 'due', as we are of the clear view that as per Section 25 and the sequence of events led before us, the tax was due and payable when the return is filed, and in any case, though he was not liable to pay VAT @ 22%, he was covered by the entry in Section 5(1)(e), where he ought to have paid VAT @ 12% and that is how he is subjected to payment of interest by impugned order which is upheld by the Appellate Authority.

26. Finding no merit in the submissions, by upholding the Judgement and Order passed by the Appellate Authority, the Petition is dismissed.

(ASHISH S. CHAVAN, J.) **(BHARATI DANGRE, J.)**