

The High Court of Madhya Pradesh : Bench At Indore

Case Number & Parties Name	Value Added Tax Appeal No.43 of 2020 M/s Great Galleon Ventures Limited, 160 Kanchan Bagh, Indore, M.P. TIN 23910902438 v/s Deputy Commissioner of Commercial Tax, Division – 3, Indore, M.P. Value Added Tax Appeal No.5 of 2022 M/s Great Galleon Ventures Limited, 160 Kanchan Bagh, Indore, M.P. TIN 23910902438 v/s Deputy Commissioner of Commercial Tax, Division – 3, Indore, M.P.
Date of Order	21.04.2022
Bench	<u>Division Bench:</u> Justice Vivek Rusia Justice Anil Verma
Judgment delivered by	Justice Vivek Rusia
Whether approved for reporting	Yes
Name of counsel for parties	Shri Vashistha Narayan Dubey, learned counsel for the appellants. Shri Manish Nair, learned Deputy Advocate General for the respondent / State.
Law laid down	The rectified spirit's manufacture and sale by the present appellant is not a liquor to claim an exemption under Entry 47 of Schedule – I or Entry 6 Part – III-A of Schedule – II of the VAT Act. The MPCTAB has also held that in

	common parlance meaning of Indian Made Foreign Liquor means the liquor which is being sold from the shop having a licence for human consumption which does not include the rectified spirit, therefore, it is not exempted from Entry 47 of Schedule – I or Entry 6 Part – III-A of Schedule – II of the VAT Act. We do not find any substantial questions of law involved in the present appeal.
Significant paragraph numbers	08 to 12

ORDER

Delivered on this Day of 21st April, 2022

As per Vivek Rusia, J:

Regard being had to the similitude in the controversy involved in the present cases, with the joint request of the parties, matters are analogously heard and being decided by this common order. Facts are being taken from VATA No.43/2020.

The appellant has filed this Value Added Tax Appeal under Section 13 of the Madhya Pradesh Entry Tax Act, 1976 read with Section 53 of the Madhya Pradesh Value Added Tax Act, 2002 against (i) assessment order dated 29.10.2015 passed by the Assessing Officer in Proceeding No.52/2014/Entry tax pertaining to assessment year 2013–14 (ii) order dated 02.11.2016 passed by the Additional Commissioner & Appellate Authority, Commercial Tax, Indore in First Appeal No.293/Entry tax/2015 and (iii) order dated 25.06.2020 passed by the Madhya Pradesh Commercial Tax Appellate Board, Indore in Second Appeal No.A/442/CTAB/IND/16 disallowing the claim of exemption of

entry tax on rectified spirit to the tune of Rs.15,26,36,500/- and imposing an interest amounting to Rs.1,66,447/-.

02. The facts of the case in short are as under: -

2.1. The appellant is a company registered under the provisions of the Companies Act, 1956 and is engaged in the business of potable alcohol / alcoholic liquor under the licences issued by the Government of Madhya Pradesh under the M.P. Excise Act, 1915. During the period from 01.04.2013 to 31.03.2014, the appellant purchased potable spirit to manufacture the liquor. Prior to 01.04.2013, the spirit was exempted along with liquor from entry tax under Entry No.2 of Schedule – I of the exemption list of the Entry Tax Act. According to the appellant, prior to 01.04.2013, the spirit was also under the category of goods falling under Schedule – I of the Value Added Tax Act (hereinafter referred to as VAT Act) and also under Entry No.47 of Schedule – I of the VAT Act.

2.2. After 01.04.2013, Entry 47 of Schedule – I of the VAT Act has been separated into two entries i.e. Entry 47 of Schedule – I & II and Entry 6 of Part – III-A of Schedule – II, therefore, despite the aforesaid amendment, the spirit being a liquor continued to be exempted from the entry tax as it is covered under the M.P. Excise Act. In the year 2009 – 10, the respondents have rejected the spirit to be classified under Entry 47 of Schedule – I of the VAT Act and started classifying the spirit under the residual entry of the VAT Act.

2.3. Number of writ petitions were filed challenging the

aforesaid action of the State viz. W.P. Nos.10256/2016, 10258/2016, 10260/2016 & 10261/2016 and vide order dated 26.08.2016, all the writ petitions were allowed, and assessment orders were quashed.

2.4. The State Government approached the Apex Court by filing the SLP challenging the order passed in the main case of W.P. No.2366/2016 and the said SLP has been dismissed on 17.04.2017, meaning thereby, the order of the High Court classifying the spirit under Entry 47 of Schedule – I of the VAT Act has been upheld. However, it is not in dispute that this Court has considered Entry 47 of Schedule – I of the VAT Act prior to amendment on 01.04.2013. After 01.04.2013, Entry 47 of Schedule – I of the VAT Act has undergone a change and it is split into two entries (i) Entry 47 of Schedule – I under Section 16 of the VAT Act and (ii) Entry No.6 in Part – III-A of Schedule – II of the VAT Act and the same is as under:-

- “(i) -----
- (ii) liquor sold by a dealer other than a dealer who holds C.S.-2/C.S.-2B/F.L.-1/F.L.-1AAAAA license under the Madhay Pradesh Excise Act, 1915.”
- (6) -----

2.5. The relevant part of the order dated 26.08.2016 passed in Nos.10256/2016, 10258/2016, 10260/2016 & 10261/2016 is reproduced below:-

“2. In all the cases the petitioners are either manufacturer of IMFL or Rectified Spirit and the question involved in the writ petitions are as to whether by virtue of Entry No.18 to Schedule-I of the M.P. Commercial Tax Act, 1994 or Entry No.47 to Schedule-I of the M.P. VAT Act, 2002, the

manufactured product i.e. IMFL or Rectified Spirit being an excisable article is liable to be taxed under the Commercial Tax Act, 1994 or the VAT Act, 2002 as the case may be. According to the petitioners the product in question i.e. Indian Made Foreign Liquor and Rectified Spirit being an excisable article under the M.P. Excise Act, it is exempted from payment of duty or tax under the Commercial Tax Act and VAT Act. This question has been answered against the Revenue and in favour of petitioners by us in a detailed judgment rendered today in **W.P. No.2366/2016 - Gwalior Alcobrew Pvt. Ltd. Vs. State of M.P. & Others** and we have held in the aforesaid case after detailed analysis of various judgments that foreign liquor manufactured in the State of M.P. and exported to other State is an excisable article and even though it is exempted from payment of excise duty but being an excisable good on which the State Government may levy excise duty under the Excise Act, recovery of Commercial tax or VAT tax is not permissible. We find that in all these petitions be it IMFL or Rectified Spirit till amendment brought about in Entry No.47 to Schedule-I of the VAT Act vide notification issued on 1.4.2013, the principles laid down by us in the case of **Gwalior Alcobrew Pvt. Ltd.** (supra) will apply. **After 1.4.2013 the question of imposition of duty/ tax with regard to Rectified Spirit may be different.** But in all these cases as the assessment year is prior to 1.4.2013, the principles laid down in the case of **Gwalior Alcobrew Pvt. Ltd.** (supra) will squarely apply and therefore, on this ground alone, all these petitions are required to be allowed and the impugned orders be it the orders of assessment, order passed by the Revisional Authority or proceeding initiated on show cause notices are liable to be quashed and we have no hesitation in doing so.....”

(Emphasis supplied)

2.6. Now after 01.04.2013 the appellant has claimed an exemption on sell/import/export of rectified spirit on the ground that it is also a liquor under the M.P. Excise Act,1915 hence, covered under the aforesaid entries. Learned Assessing Officer vide impugned order dated 29.10.2015 has denied the exemption and

imposed demand along with interest. The aforesaid order has been upheld by the Appellate Authority as well as by the Madhya Pradesh Commercial Tax Appellate Board, hence, the VAT Appeal is before this Court.

03. The appellant has suggested the following substantial questions of law involved in this appeal: -

(i) Whether on the facts and in the circumstances of the case Ld. MPCTAB was justified in not classifying the spirit into the resulting splitted entired i.e. either under 1) Entry 47 of Schedule 1 of the VAT Act or 2) Entry 6 in Part IIIA of Schedule II of the VAT Act ?

(ii) Whether on the facts and in the circumstances of the case Ld. MPCTAB was justified in ignoring that, both of the above splitted entries under VAT are totally covered under entry 1 & 2 of the Schedule I of Entry Tax Act, are exempted from entry tax and hence the spirit in all cases continues to be exempted even post 01/04/2013 ?

(iii) Whether on the facts and in the circumstances of the case Ld. MPCTAB was justified by not appreciating the well settled legal position of law that where in statute any word is not define the same can be understand taking recourse of different aids of interpretation, and the definition of Liquor in MP Excise Act should be read pari meteria in MP Entry Tax Act ?

(iv) Whether on the facts and in the circumstances of the case Ld. MPCTAB was justified in wrong application of common parlance test, when legislature has already provided express definition of the term "Liquor" under

Section 2(13) of the Excise Act and includes spirit in it ?

04. Learned counsel for the appellant submits that the MPCTAB was not justified in classifying the spirit either under Entry 47 of Schedule – I or Entry 6 Part – III-A of Schedule – II of the VAT Act because the liquor is not defined in the VAT Act, therefore, the definition of liquor can be borrowed from the M.P. Excise Act and according to which liquor means intoxicating liquor and includes the spirit of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol. The spirit is also defined under Section 2(17) of the M.P. Excise Act as spirit means any liquor containing alcohol obtained by distillation whether it is denatured or not.

05. Learned Deputy Advocate General for the respondent has argued in support of the impugned orders and submits that no substantial questions of law are involved in this case.

06. We have heard learned counsel for the parties and perused the record.

07. According to the learned counsel appearing for the appellant, the liquor is not defined in the VAT Act hence the definition of liquor is liable to be borrowed from the M.P. Excise Act, 1915. The appellant is claiming exemption in payment of tax under the VAT Act on sale/import/export/manufacturing of Rectified Spirit mainly on the ground that it is liquor under the M.P. Excise Act.

08. Section 2(17) defines ‘spirit’ it means any liquor

containing alcohol obtained by distillation whether it is denatured or not. The word denatured is also defined in the Act and as per Section 2(5) “denatured” means rendered unfit for human consumption in such a manner as may be prescribed by the Government on this behalf. The word ‘Liquor’ as defined in Section 2(13) also includes spirit.

09. Under the RECTIFIED SPIRIT RULES framed by the State Government “Rectified Spirit” means plain un-denatured spirit of strength of 66 degrees or more over proof and includes Extra Natural Alcohol and Absolute Alcohol as defined in I(a) of the Rules. As per Rule III no person or institution shall possess or transport “Rectified Spirit” under the permit granted by the District Excise Officer / Assistant Excise Officer in Form R S 2. Hence, in view of the above definitions and rules, the “Rectified Spirit” is a separate class of commodity in the M.P. Excise Act for which a separate licence is required to be possessed. The appellant has not filed the copy of licences issued to them by the competent authority for the sale of liquor or “Rectified Spirit”. As per exemption granted by the Government, the dealer who sells the liquor other than a dealer who holds C.S.-2/C.S.-2B/F.L.-1/F.L.-1AAAA licence under the Madhya Pradesh Excise Act, 1915

10. The appellant is dealing with the rectified spirit which is not manufactured for consumption as liquor. Hence, after 01.04.2013 it is out of the purview of Entry 47 of Schedule – I or Entry 6 Part – III-A of Schedule – II of the VAT Act, hence, the

VAT has rightly been imposed.

11. It is not in dispute that in W.P. No.2367/2016, this Court has considered the validity of Entry 18 to Schedule – I of the M.P. Commercial Tax Act and Entry 47 of Schedule – I of the VAT Act. As to whether the manufactured product i.e. Indian Made Foreign Liquor (IMFL) or rectified spirit being an excisable article is liable to be taxed under Commercial Tax Act or VAT Act as the case may be. The question has been answered against the revenue and in favour of the petitioners who the manufacturers of IMFL and rectified spirit are. This Court has held that after 01.04.2013, the question of imposition of duty/tax concerning the rectified spirit may be different and all the writ petitions were allowed only in respect of the assessment year before 01.04.2013. After 01.04.2013, the issue came up for consideration before this Court in *W.P. No.2170/2016 (M/s Pernod Ricard India Private Limited v/s The State of Madhya Pradesh & Others)* decided on 29.04.2019. In this case, the Division Bench of this High Court has considered the definition of liquor as well as spirit defined under the M.P. Excise Act, 1915 and has held that the sale or purchase is of ENA/ Rectified Spirit the State will be within its competence to charge levy at the rate under residual entry. It has also been held that when the liquor is sold by a dealer who holds F.L.2/F.L.3/F.L.3A/F.L.4/F.L.4A license under M.P. Foreign Liquor Rules 1996, the tax is 5 %. Similarly, when it was sold by a dealer other than a dealer holding that license, the tax is 5% and these

licences do not sell ENA/Rectified spirit under the licenses held by them, which are commodities different from 'liquor' sold under said licenses and the writ petition was accordingly dismissed.

Paragraphs – 24 to 34 of the aforesaid order are reproduced below:-

[24] In the present case, liquor has been taxed @ 5% whereas, the Rectified Spirit/ Extra Neutral Alcohol is taxed at higher rate of 13% (presently 14%).

[25] The word liquor as defined under Section 2(13) of Excise Act, 1915 means:-

“(13) “liquor” means intoxicating liquor, and includes spirits of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act.”

[26] Whereas Spirit as per Section 2(17) of 1915 Act means:

“(17) “spirit” means any liquor containing alcohol obtained by distillation whether it is denatured or not.”

[27] The word liquor is a genus. It is a group marked by common characteristic; specifically: a category of biological classification ranking between the family and the species, comprising structurally or phylogenetically related species or an isolated species exhibiting unusual differentiation. The expression 'spirit' is a specie when considered in the context of liquor.

[28] The spirit which is a liquor containing alcohol is obtained by distillation under Madhya Pradesh Distillery Rules, 1995, the spirit takes different form. As per Rule 2(3) it can be “Denatured Spirit” or “Denatured Alcohol” which means “alcohol of any strength which has been rendered effectively unfit for human consumption by admixture of such denaturant as may be approved by the Excise Commissioner”. Further, as per Rule 2(7) it could be “Extra Neutral Alcohol” which is “silent spirit of an optimum quality which complies with the standard for neutral spirit prescribed by the Bureau of Indian Standards for the purpose. That Rule 2(21) of Rules 1995 defines “Rectified Spirit” which means “plain un- enatured spirit of strength of 66 degrees or more over proof and includes

Extra Neutral Alcohol and Absolute Alcohol”.

[29] Thus when the sale or purchase is of ENA/ Rectified Spirit the State will be within its competence to charge levy at the rate under residual entry.

[30] When the liquor is sold by a dealer who holds F.L.2/F.L.3/F.L.3A/F.L.4/F.L.4A licence under M.P. Foreign Liquor Rules 1996, the tax is 5 %. Similarly when it is sold by a dealer other than dealer holding these licences, the tax is 5 %.

[31] These licences under Rules 1996 are:

“F.L.2 (Restaurant Bar licence)- F.L.2 licence holder may sell foreign liquor to the customer of the restaurant for consumption on the licensed premises with meals or snacks. This licence may be granted to restaurants having facilities of such scale and standard, as may be determined by the State Government.

F.L.3 (Hotel Bar Licence). - F.L.3 licence holder may sell foreign liquor for consumption on the licensed premises to residents of such hotels for their own use or that of their guests and other casual visitors, with meals and snacks. This licence may be granted to hotels having both lodging and boarding facilities of such scale and standard as may be determined by the State Government.

F.L. 3-A (Resort Bar Licence) : F.L.3-A licence holder may sell foreign liquor for consumption on the licensed premises to residents of such resort for their own use or that of their guests and other casual visitors with meals or snacks. This licence may be granted to resorts having both lodging and boarding facilities of such scale and standard, as may be determined by the State Government.

F.L. 4 (Civilian Club Licence). - A civilian club holding F.L.4 licence may possess and sell foreign liquor for consumption on the licensed premises by bonafide members of such club or their guests.

F.L. 4A (Commercial Club). - A commercial club licence may be granted to a company, firm, association of persons or any other concern which possesses atleast five of the facilities listed below of which facilities Nos. (a-1) and (a-

2) are a must :-

(a-1) Swimming pool;

(a-2) Gymnasium having not less than 12 items for physical exercise;

- (a-3) Badminton hall;
- (a-4) Billiards/pool table;
- (a-5) Table tennis hall;
- (a-6) Squash Court;
- (a-7) Cards room;
- (a-8) Lawn tennis Court.

The licensee may possess Foreign Liquor at the licensed premises and sell it thereat to members of the club or their bonafide guests when accompanied by the member of the club.”

[32] Evidently, these licences do not sell ENA/Rectified spirit under the licences held by them, which are commodity different than 'liquor' sold under said licences. And as the liquor defined under Section 2(13) of the Act of 1915 is taken out from exempted category under Entry 47 in Schedule I of VAT Act 2002 with effect from 01.04.2013, all its species, by necessary corollary, comes out of exempted category.

[33] Furthermore, under Entry 56 in part II of Schedule II and Entry 6 in part III A of Schedule II of the VAT Act 2002, the liquor which is sold by the holder of licence FL2, FL3, FL3A, FL4 and FL4A is only subjected to 5 % tax and not other species of the liquor which as rightly construed by the State functionaries will be covered by residuary entry.

[34] In view whereof, we do not perceive any ultra vires or an arbitrary act on the part of the State in charging tax at the rate 13% on ENA/Rectified Spirit. The challenge accordingly fails.”

12. In view of the above, the issue is no *res integra*. The rectified spirit's manufacture and sale by the present appellant is not a liquor to claim an exemption under Entry 47 of Schedule – I or Entry 6 Part – III-A of Schedule – II of the VAT Act. The MPCTAB has also held that in common parlance meaning of Indian Made Foreign Liquor means the liquor which is being sold from the shop has a licence for human consumption which does not include the rectified spirit, therefore, it is not exempted from Entry

47 of Schedule – I or Entry 6 Part – III-A of Schedule – II of the VAT Act. We do not find any substantial questions of law involved in the present appeal.

Accordingly, the present Value Added Tax Appeal stands dismissed.

The order passed in the present appeal shall govern the connected appeal also, therefore, the connected appeal i.e. Value Added Tax Appeal No.5/2022 also stands dismissed.

Let a copy of this order be kept in the connected appeal also.

(VIVEK RUSIA)
J U D G E

(ANIL VERMA)
J U D G E

Ravi