



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS



MANUAL OF KEY JUDICIAL PRONOUNCEMENTS

Volume 1

Alcobev Sector

INSIDE:

- Right to conduct liquor businesses
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- Advertisements for Surrogates / Brand Extentions

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ON THE RIGHT TO CONDUCT LIQUOR BUSINESSES



Khoday Distilleries and Ors. vs. State of Karnataka and Ors.

Trade and business in liquor for human consumption is res extra commercium (outside commerce); Article 19(1)(g) does not confer a fundamental right to trade or do business in liquor as a beverage; State can create monopoly or prohibit alcohol trade; However, limitations prescribed by the State cannot discriminate between persons licenced to carry on the trade or business.



FACTS OF THE CASE

- The constitutionality of various rules issued under the Karnataka Excise Act, 1965 were challenged. The issues raised before the Hon'ble Supreme Court were as follows –
 - Whether there existed a fundamental right to carry in trade in liquor?
 - Whether a monopoly for the manufacture, trade or business in liquor can be created in favor of the State?
 - Whether reasonable restrictions under Article 19(6) of the Constitution can be placed only by an Act of Legislature or through subordinate legislation as well?



JUDGEMENT

The Hon'ble Supreme Court laid down the following principles in this landmark judgement:

- The right conferred by Article 19 (1) (g) is not absolute but is subject to restrictions imposed under other provisions including Articles 19(6) and 47.
- The right to practice any profession or carry on an occupation, trade or business does not extend to activities which are injurious to health, safety and welfare of the general public. Potable liquor is an intoxicating drink that is injurious to health and is thus *res extra commercium* (outside commerce). Therefore, a citizen has no fundamental right to do trade or business in liquor.
- Article 47 contains a directive which ordains the State to bring about prohibition of the consumption of intoxicating drinks. Therefore, the State can completely prohibit or regulate the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage. It can even create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale or distribution of liquor as a beverage.
- Therefore, the State may impose limitations or restrictions on the trade or business in potable liquor. However, within such limitations prescribed, the State ought not to discriminate between licensees who are qualified to carry on the trade or business.
- As for medicinal and toilet preparations containing liquor or alcohol, as well as industrial alcohol, the same cannot be prohibited but the State may place reasonable restrictions in the interest of general public.



**Pernod Ricard India Pvt. Ltd. and Ors. vs. State of Chhattisgarh and Ors.
W.P.(C) No. 1059 and 1060 of 2018, Chhattisgarh HC**

State cannot discriminate between persons licenced to trade in liquor



FACTS OF THE CASE

- Up to April 1, 2017, retail outlets for liquor were privately owned and operated. Post April 1, 2017, control and operation of all retail outlets was taken over exclusively by a State-owned and controlled Corporation.
- Allegedly, there was a drastic fall in the demand for the Petitioner's products due to discriminatory practices adopted by the exclusive licensee. Further there was a complete lack of transparency in the criteria for determination of orders and thus, the entire process of procurement was challenged to be unfettered, unfair and arbitrary.



JUDGEMENT

- The Hon'ble Court observed it was a settled principle of law that there was no fundamental right under Article 19(1)(g) to trade in liquor as it was regarded to be *res extra commercium*. The State had the power to either completely prohibit the trade in liquor, create a monopoly for itself to manufacture or trade in liquor or to allow private individuals to do the same.
- It was also observed to be a settled principle that once the State permits trade and business in liquor, they are under an obligation to provide a level play field to all who are qualified.
- The Hon'ble Court observed that there was no clear-cut policy framed that governed the procurement of liquor in the present case. Such a policy ought to be framed and handed over to the exclusive licensee as per the terms of the governing statute. Further, there were various procedural flaws including failure to issue an order granting exclusive right to the Corporation, as well as failure to grant license.
- Therefore, the State Government and the Excise Commissioner were held to have failed to perform their statutory duties.
- The Hon'ble Court also observed that in the sale of any consumables such as liquor which is monopolistic in nature, it is the choice of the consumers that ought to prevail and not the choice of the State. Thus, the Government was ordered to frame necessary guidelines and take action in this regard.



**Craig Martin Distillery Private Limited v. State of Andhra Pradesh and Ors. 2003 (5)
ALT 613**

Tender offered only to existing distillers to the exclusion of new distillers was held to be discriminatory



FACTS OF THE CASE

- As per a Government Order read with the Excise Policy of the State, tenders were sought only from local distilleries that already possessed a valid excise license. In other words, other players such as the Petitioner, were disabled from participating in the tender as they did not have a distillery within the State of Andhra Pradesh. This Government Order and the relevant portion of the Excise Policy were challenged.

**JUDGEMENT**

- The Hon'ble Court held that even in respect of trade and business in liquor, the State is not immune to its obligations under the equality injunctions of the Constitution.
- In Andhra Pradesh, the trade and business in alcoholic beverages was legislatively sanctioned and administratively promoted. The State's assertion that the policy was to discourage consumption of alcoholic beverages was not well founded as the facts and figures made it evident that the State exclusively and increasingly patronized existing distilleries located in its territory.
- Therefore, it was held that the State ought to justify the exclusion of the Petitioners from participation in the tender on constitutionally sustainable grounds. It was further held that the State's policy to not grant fresh licensees to establish a distillery in the State was illegal and unconstitutional. The writ petitions were accordingly allowed, and the impugned Government Order was declared invalid.

**International Spirits and Wines Association of India v. State of Haryana and Ors.
AIR 2019 SC 955**

Delegated legislation creating a monopoly in favor of a private entity, struck down when such delegation was done in excess of the powers conferred under the parent statute

**FACTS OF THE CASE**

- The Appellant challenged an amended Rule 24 (i-eee) of the Haryana Liquor License Rules, which provided for a single license to deal in imported foreign liquor (bottled in origin) for the entire State. The Appellant also challenged the procedure for grant of the single license through e-bidding as per the State Excise Policy.
- The Appellant's submission was that the creation of a monopoly in favor of a private entity to trade in liquor was violative of Article 19(6) read with Article 14 of the Constitution of India. It was further submitted that Rule 24 (i-eee) was *ultra vires* the Punjab Excise Act, 1914 since Section 58(2) empowered the State government to issue licensees for a local area alone, whereas the rule as amended by the Financial Commissioner empowered the Excise Commissioner to issue a single L-1BF license for the entire State. It was further submitted that Section 13(a) contained a prohibition on delegation of powers by the State Government and hence, the amendment was without the authority of law.

**JUDGEMENT**

- The Hon'ble Supreme Court observed, as per the scheme of the provisions, that a liquor license was to be granted to a local area only. In any case, the power to determine grant of liquor licensees in a local area was exclusively vested with the State Government.
- The Act maintained a clear distinction between a local area as a unit for grant of license, and the entire State for other purposes. Thus, it was held that to confer the Financial Commissioner with the power to determine the licensees to be granted to the entire State was not only unreasonable, but in the teeth of the statutory scheme and provisions. Further, the impugned Rule had been notified by the Excise Commissioner as a delegate of the Financial Commissioner, which was *ultra vires* the powers conferred to the Financial Commissioner.
- Thus, the appeal was allowed, and the amended Rule was struck down.

ON PROCEDURES UNDER VARIOUS STATE EXCISE LAWS



Bacardi India Pvt. Ltd. vs. State of Karnataka and Ors. 2019(5) KarLJ 696

Time limit prescribed for furnishing EVC held to be directory and not mandatory.



FACTS OF THE CASE

- The Petitioner was engaged in the business of manufacturing and sale of liquor. As per the procedure prescribed in Karnataka Excise (Possession, Transport, Import and Export of Intoxicants) Rules, 1967 (**Rules**) for the export of liquor, the Petitioner applies for an export permit, furnishes a bank guarantee as prescribed and then exports the liquor. Post export, the exporter procures 'Export Verification Certificate' (**EVC**) from the Excise Department in the destination State and submits the same to the Karnataka Excise Department.
- As per Rule 20(2) of the Rules, a time limit of 60 days from date of export is prescribed for submission of EVCs, failing which penalty equivalent to excise duty on the exported liquor is imposable. In this case, the Excise Department sought to impose penalty for the delay in submissions of EVCs.
- The Petitioner sought a declaration that Rule 20(2) was *ultra vires* the rule-making power contained in Section 71 of the Karnataka Excise Act, 1965 inasmuch as the same is arbitrary, without the authority of law and against Article 265 of the Constitution. It was alternatively prayed that the time limit prescribed under Rule 20(2) be held to be directory rather than mandatory.



JUDGEMENT

- The Hon'ble Court held that there was no fetter on the Government to frame rules to regulate exports, including insistence of furnishing of EVCs as mandatory proof of export. Therefore, the requirement of furnishing EVCs itself was held to be *intra vires*.
- It was however, observed that the Petitioner had no control over the delays caused by the destination States in issuance of EVCs.
- Relying on the judgements in *McDowell and Co. Ltd. Hyderabad v. Commissioner of Excise, A.P and Ors. (1998 (2) ALT 593)* and *State of Kerala v. Mc. Dowell and Co. Ltd ((1989) 1 KLT 586)*, the Hon'ble Court held that the time limit prescribed for furnishing of EVCs is directory and not mandatory and the word 'shall' in Rule 20(2) should be read as 'may' to achieve the object of the legislation, viz. to evidence export of goods and payment of duty in the destination State.



Saraya Industries Ltd. vs. State of Uttar Pradesh and Ors. 2005 1 AWC 911 All

Any infraction or procedural lapse in affixing hologram/barcodes insufficient basis to presume duty evasion.



FACTS OF THE CASE

- The Petitioner was a licensee for manufacture of potable liquor in Uttar Pradesh. The State Government took a policy decision mandating that distilleries are to obtain and affix security holograms issued by the Department to prevent evasion of duty and smuggling of liquor. Excise duty was payable on the bottles/pouches/cans on which hologram was

affixed and a detailed procedure was prescribed through various circulars. Excise duty was also chargeable on wasted holograms.

- The Petitioners challenged the policy inasmuch as it sought to levy excise duty even if the security holograms were wasted and could not be produced before the excise department for verification.



JUDGEMENT

- The Hon'ble Court observed that as per the terms of Section 28 of the UP Excise Act, 1910, excise duty or countervailing duty was imposable on an excisable article. By referring to the definition of excisable article, it was clear that excise duty could be imposed only on alcoholic liquor manufactured for human consumption. The State Government was authorized to levy the excise duty at the point of issue of alcoholic liquor.
- Therefore, to levy excise duty, the incidence has to arise within the four corners of Section 28 of the Act. The Excise Commissioner only had the power to issue regulatory directions but could not impose duty by way of regulatory measures.
- Effectively, holograms could only be used as a regulatory measure to curb evasion and cannot be treated as an excisable article themselves. Therefore, it was held that no duty could be levied on wasted holograms which could not be produced.
- It was further held that there was no notification issued to levy excise duty in the present case and since that same was done only through circulars, the levy was unjustified and thus, quashed.



Mysore-Intercontinental Hotels Pvt. Ltd vs. Commissioner of Excise & Anr. 2017 SCC OnLine Kar 2778

Change in directorship does not amount to transfer of an excise licence



FACTS OF THE CASE

- The Petitioner had undergone a change in directorship, and this change was reflected in the application for renewal of excise license. In response, an endorsement issued by the Excise Department whereby a fee was demanded for 'transfer of excise license' due to this change of directorship. This endorsement was challenged by the Petitioner.



JUDGEMENT

- The Hon'ble High Court observed that it was a basic concept of corporate law that directors of a company are separate from the juristic person or the corporate body of the company itself. It is the corporate body of the company which is the excise licensee and not the directors of the company.
- It was therefore, held that a change in directorship of Company inducting two new directors does not amount to transfer of excise license.

**Santhi Hariharan vs. Excise Commissioner and Ors. 2012 (2) KLJ 815**

Excise authorities have no authority to seize de-alcoholised wine.

**FACTS OF THE CASE**

- The Appellant-Petitioner purchased a consignment of 'de-alcoholized wine' from an importer and was transporting the same inter-State. The State excise authorities seized the consignment suspecting it to be alcoholic liquor and sent a sample for analysis. As per the report, the ABV content ranged from 0.2% to 0.41% which fell well below the definition of wine as per the Akbari laws.
- Despite this report, the excise authorities did not release the goods. The Petitioner challenge the non-release of goods.

**JUDGEMENT**

- The Hon'ble High Court discussed whether de-alcoholized wine, containing alcohol percentage of 0.20% to 0.41% is a commodity that could be seized pursuant to a search under Section 31 of the Kerala Abkari Act, 1967.
- While wine was defined to contain alcohol ranging from 8% to 15.5%, 'liquor' was largely defined to include spirits of wine, arrack, spirits, toddy, beer and all liquid containing alcohol.
- The Hon'ble Court referred to the Customs Tariff Act, 1975 which classified non-alcoholic drink as that with less than 0.5% alcohol. Further, the words 'de-alcoholized wine' indicated that any alcohol was removed in the process, and only traces may have remained.
- It was thus held that the seizure was on a mistaken basis that the product contained liquor, and the goods ought to have been released upon receipt of the test reports. It was held that such products can be sold without any licence from the Excise authorities as they are not an alcoholic drink in the first place. Thus, the action against the Petitioners was quashed with directions for immediate release.

**Mc Dowell & Co. Ltd., Hyd and Ors. v. Government of AP and Ors. 2000 (5) ALD 490**

Rate contracts offered on the basis that price is to be lower than the sale price in neighbouring States held to be irrational and discriminatory

**FACTS OF THE CASE**

- The Petitioner was a manufacturer of IMFL. The State Corporation held exclusive privilege to import, export and carry out wholesale trade and distribution in Andhra Pradesh.
- The State Government issued a government order providing that the Corporation was to procure stocks of IMFL and Beer on a rate contract as per an all-India tender notification. The order specifically provided that: (i) no undue advantage was to be given to any supplier, (ii) the tenderers were to provide rates at which such brands were being supplied to corporations in neighbouring States (Tamil Nadu, Kerala and Karnataka) and that the basic rates quoted by them were not to be higher than the rates in such other States (per Clause 2.7 of the order).
- For 1998-99 and 1999-2000, rates higher than those quoted in neighbouring States were approved by the negotiations committee notwithstanding Clause 2.7, and the Petitioners and other manufacturers entered into rate contracts with the Corporation for 1999-2000 at rates higher than that the rates in adjoining States.

- For 2000-2001, no rate contracts were entered into for certain brands of the Petitioner and procurement was discontinued on the basis that these brands were to be supplied at Tamil Nadu prices. The Petitioner challenged this action as arbitrary and irrational.



JUDGEMENT

- The Hon'ble High Court observed that the price quoted by the Petitioners in the neighbouring States and particularly, in Tamil Nadu was the singular determining factor in the failure to reach an agreement in the rate contract with the Petitioner. The records did not contain any other rational analysis.
- Further, no comparison was made to the prices offered by other manufacturers. Thus, the Negotiations Committee had accepted prices of manufacturers who did not supply identical brands to neighbouring States in that specific year, which granted undue profiteering to such manufacturers.
- This was held to be a discriminatory application of an irrational test. It was held to be unsuited to the achievement of the asserted State policy and thus violative of Article 14 of the Constitution. The Petitioners had been adversely impacted and the State had deprived them of equal protection of the law.
- The Court suggested a mechanism to evolve a test based on the cost incurred in manufacture within Andhra Pradesh along with other factors such as freight, duties, promotional expenses, margin of profit, etc.



Bihar Distillers & Bottlers Pvt. Ltd. and Ors. v. State of Bihar and Ors. 2017 (2) PLJR 818

State Government does not have power to legislate over alcohol unfit for human consumption



FACTS OF THE CASE

- The Petitioners were engaged in the business of manufacture of Extra Neutral Alcohol (**ENA**) which is unfit for human consumption. The Petitioners had set up their distillery and procured license for manufacture of ENA due to various incentives provided by the Industrial Incentive Policy of the State Government.
- Subsequently, certain provisions of the Bihar Prohibition and Excise Act, 2016 (**Prohibition Act**) were amended as per which, 'spirit' or 'ENA' was included within the definition of 'intoxicant'; and thus, the manufacture and renewal of licenses pertaining to industrial alcohol (including ENA) was prohibited in Bihar.
- The Petitioner has challenged this amendment contending that the Industries (Development and Regulation) Act, 1951 (**IDR Act**) was enacted under Entry 52 of List I of the Seventh Schedule to the Constitution, and as per Schedule I read with Section 2 of the IDR Act, 'fermentation industries' have been brought under the control of the Union. Therefore, the act of the State in carrying the said amendment to the Prohibition Act was illegal.



JUDGEMENT

- The Hon'ble Court observed it was settled law (as per the constitutional bench in **Synthetics and Chemicals Ltd. v. State of UP ((1990) 1 SCC 109)**) that the State Government was not competent to make an enactment with regard to industrial alcohol or alcohol not fit for human consumption. Industrial alcohol is a distinct item and does not fall under the constitutional entry for potable alcohol.

- Therefore, in extending the definition of ‘intoxicant’, the State Government has legislated and encroached into the field reserved for the Central Government. Thus, it was held that the provisions pertaining to prohibition would not apply to ENA.
- The Hon’ble Court also observed that the State ought not to justify their actions on the ground of furtherance of prohibition policy and prevention of misuse of ENA, as it ought to have done so within the four corners of the Constitution. The action of the State should not be contrary to the mandate of the IDR Act. Thus, the petitions were allowed.

ON DEMAND OF DUTIES AND TAXES



Gupta Modern Breweries vs. State of Jammu and Kashmir and Ors. (2007) 6 SCC 317

Imposition of taxes and salary expenses of officials without the authority of law is unsustainable.



FACTS OF THE CASE

- Rule 17 of the Jammu and Kashmir Distillery Rules, 1946 provided that, upon an order by the Excise Commissioner, licensees would have to deposit a sum to the Government treasury, towards salary expenses for the Government excise official posted in the distillery. Rule 17 was challenged as *ultra vires* the Jammu and Kashmir Excise Act, 1901, and thus contrary to Article 265 of the Constitution.



JUDGEMENT

- The Hon'ble Supreme Court observed that as held in the *Khoday Distilleries* case (*supra*), although trade in liquor is *res extra commercium*, the government cannot be manifestly unjust or arbitrary.
- It was also observed that while regulatory powers are generally to be widely construed, the statute ought to, in clear terms, authorize the Government to impose any fees, taxes or duties. The Hon'ble Court held that in the present case, there was no provision in the statute that specifically provided for collection of a sum as contemplated in Rule 17.
- In this case, the purpose of deputing excise staff was to ensure that the de-natured spirit was not dealt in a manner contrary to law. Therefore, there was no *quid pro quo* between the sum charged and the services rendered and thus, the sum collected in the present case was observed to be in the nature of a 'tax'. Further, imposition of a tax requires a specific legislative provision to that effect, and thus the imposition in Rule 17 was held to be arbitrary and illegal.



Ranger Breweries Ltd. v. State of Himachal Pradesh and Ors. 2010 (3) ShimLC 98

No duty leviable on wastage in re-distillation process in the absence of a machinery for such levy



FACTS OF THE CASE

- The Petitioner was engaged in re-distillation of spirit for the manufacture of liquor fit for human consumption. Excise duty was sought to be imposed on the wastage that occurred in the process of re-distillation in the distilleries of the Petitioner for the period prior to 1999.
- The Petitioner contended that duty is permissible only on alcoholic liquor fit for human consumption and that the demand raised was on spirit which was not fit for human consumption, and hence, unsustainable.



JUDGEMENT

- The Hon'ble Court held that it is a settled principle that excise duty is permissible by the State only on liquor fit for human consumption. However, in terms of Section 33A of the Punjab Excise Act, 1914, levy of duty was also permissible on an intoxicant which was not an excisable article since the definition of 'intoxicant' under Section 12 was wide enough to cover any liquor including spirit.
- As for whether the levy was permissible for wastage of such spirit, the Hon'ble Court observed that as per the Rule 101 of the Punjab Distillery Rules, 1932, duty would be leviable only if the wastage was excessive. A scale for measuring

excessive wastage was however, provided only in 1999. The Hon'ble Court held that duty would be leviable on wastage only after 1999 and only if such wastage exceeded the scale prescribed.

- Thus, it was held that no duty was to be levied on the wastage during the re-distillation process.



Anheuser Busch InBev India Ltd. v. State of Karnataka and Ors. W.P. 4346/2021 (Excise) – Karnataka HC

Demand order issued without following due process of law held unsustainable; Formula for calculation of minimum yield to be followed strictly



FACTS OF THE CASE

- The Karnataka Excise (Regulation of Yield, Production and Wastage of Spirit, Beer, Wine or Liquor) Rules, 1998 ('Karnataka Yield Rules') as it read during the relevant period (i.e. 2015-16), provided a formula to determine the minimum yield of beer to be produced from raw material used. The formula prescribed that for 1000 kgs of 'malt' used, 6500 Lts of beer was to be produced. As per the said Rules, failure to produce minimum yield resulted in a fine equivalent to the Excise Duty on the shortfall in yield.
- Subsequently in 2018, the formula for minimum yield was amended to consider adjuncts and other factors (gravity, etc.) in addition to malt to determine minimum yield of beer.
- The Respondents issued a demand notice for the year 2015-16 the quantity of 'adjuncts' was sought to be included to compute minimum yield, in addition to malt on the basis that: (i) the volume of beer produced is inclusive of yield not only from malt but also adjuncts, (ii) in the present case, the quantity of malt used is less than the quantity of adjuncts used. Further, the fine sought to be imposed was equivalent to not only the excise duty but also the additional excise duty leviable on such shortfall in yield.
- The said demand was challenged in writ proceedings as being without jurisdiction and contrary to the principles of natural justice.
- The demand order was withdrawn by the Department while the matter was pending before the Hon'ble Court. Consequently, the Hon'ble High Court disposed the petition allowing the Excise Commissioner to initiate fresh proceedings by following due process of law.
- The Department accordingly initiated *de-novo* proceedings on the same basis, calculating minimum yield by considering both 'malt' and 'adjuncts' used in production. An adjudication order was passed finding that adjuncts were to be considered along with malt and resultantly, there was a shortfall in yield. The interim order further recorded that after granting the Petitioner another hearing on quantification of the demand, a final order would be passed.
- This adjudication order was challenged by way of another Writ Petition.



JUDGEMENT

- The Hon'ble Karnataka High Court granted interim relief by way of stay, and *inter alia* held that the Petitioner had made out a *prima facie* case since the finding that the quantity of adjuncts was to be considered along with malt to determine minimum yield, was without jurisdiction and beyond the scope of the Yield Rules.



Anheuser Busch Inbev India Ltd. v. Commissioner of Central Tax 2021-TIOL-128-CESTAT-BANG

Service tax is not leviable on fees charged for parting with exclusive privilege held by States



FACTS OF THE CASE

- The Appellant challenged an order seeking to levy service tax, under reverse charge mechanism, along with interest and penalty, on the Export Pass fee, Import fee, Permit fee, Storage License Renewal fee, Excise Staff salary and overtime charges paid to the State excise department for the period April 2016 to June 2017.



JUDGEMENT

- The Hon'ble Tribunal observed that as per Section 117(1) of the Finance Act, 2019, Section 66B of the Finance Act, 1994 was amended to provide that no Service tax was to be levied for the grant of liquor license against consideration in the form of license fee or application fee, by whatever name called, during the period April 2016 to June 2017.
- Further, the fee charged for grant of license was not a consideration for service, but a price charged by the State for parting with its 'exclusive privilege' to trade in liquor. Further, the words '*by whatever name called*' make it evident that any fee paid towards such license under the State excise legislation would not be leviable to service tax during the period April 2016 to June 2017.
- Reliance was placed on various decisions wherein license fee, renewal fee, import fee, permit fee and export fee etc. were held to be considerations charged by the State for parting with their exclusive privilege and thus, not liable to Service tax. It was also held that there was no *quid pro quo* between the staff salary and services rendered by them and thus, no Service tax was imposable thereon either.
- As for the storage license fee, since the same was payable in lieu of storage of carbon-di-oxide, it fell outside the purview of fees paid for grant of liquor licensees and the demand of Service tax thereon was confirmed.
- Thus, it was held that the Appellant was not liable to pay Service tax on any of the fees payable by the Appellant except that of storage license fee.

ON ADVERTISEMENTS FOR SURROGATES / BRAND EXTENSIONS



Struggle Against Pain vs. State of Uttar Pradesh and Ors.

Surrogate advertisements which seek to indirectly promote liquor business held to be illegal.



FACTS OF THE CASE

- The Petitioner filed a PIL against various advertisements for musical programs, cassettes and CDs, packaged drinking water etc. It was contended that the companies are advertising the said surrogate products and events in the name of well-known brands of liquor and spend huge amounts on such advertisements.
- The same was challenged to be in violation of Section 3 of the Uttar Pradesh Intoxicating Liquor (Objectionable Advertisements) Act, 1976.



JUDGEMENT

- The Hon'ble Court observed that the definition of 'advertisement' is very wide and covers all modes thereof. In terms of Section 3, while an advertisement which solicits the use of or offers for sale any intoxicating liquor is prohibited, a mere signboard which informs that liquor is manufactured or sold in that premises, does not amount to publication of advertisement.
- However, in the advertisements in question, the product sought to be advertised was not depicted clearly. The Respondent's main business was the manufacture and sale of liquor and the surrogate products such music CDs, cassettes etc. were inconspicuously mentioned in the advertisements. Hence, they were held to be in violation of Section 3.
- The Hon'ble Court held that what was prohibited to be done directly, cannot be done indirectly by the liquor business.

ABOUT US



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ELP has been assisting the alco-bev industry on a wide range of regulatory, tax and policy matters over nearly two decades.

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