

Synthetics and Chemicals Ltd. and Others

Vs

State of U. P. and Others

Writ Petition No. 182 of 1980, etc.

(CJI E. S. Venkataramiah, K. N. Singh, B. C. Ray, Sabyasachi, Mukharji, Ranganathan Misra JJ)

25.10.1989

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. These writ petitions, civil appeals and review petitions relate to the right of the States to levy vend fee or duties in respect of industrial alcohol under different legislations in different States. We will first deal with Writ Petition No. 182 of 1980. In Writ Petition No. 182 of 1980 (Synthetics & Chemicals Ltd. v. State of U. P. & Others), we are concerned with the notification dated May 31, 1979, substituting new Rule 17(2) for old Rule 17(2) and providing for a vend fee of Rs. 1.10 per bulk litre for all issues from distillery but in case of FL 39 Licence (like the petitioner in this case), the vend fee would be so charged that the amount of this fee and purchase tax together does not exceed 25 paise per bulk litre. Then there are three review petitions, namely, Review Petition Nos. 202-04 of 1980 (Synthetics & Chemicals Ltd. v. State of U. P.) and Review Petition No. 17 of 1980 (Kesar Sugar Works Ltd. v. State of U. P.). These are directed against the judgment and order of this Court dated December 19, 1979 in State of U. P. v. Synthetics & Chemicals Ltd. ((1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614) re-agitating the challenge to Sections 24-A and 24-B of the U.P. Excise Act, 1910 as amended in 1972 and 1976 declaring exclusive privilege of the government for manufacture and all of foreign liquor as defined (which includes denatured spirit and industrial alcohol). Then there is Writ Petition Nos. 3163-64 of 1982 (All India Alcohol Based Industries Development Association v. State of Maharashtra) which challenges the amendment to Section 49 of the Bombay Prohibition Act, 1949 treating exclusive privilege for State in liquor trade and imposing a transport fee of Rs. 1.15 per bulk litre. There is Writ Petition No. 4501 of 1978 (Chemicals & Plastics India Ltd. v. State of Tamil Nadu), Writ Petition No. 2580 of 1982 (Kolhapur Sugar Mills and Another v. S. R. Hegde and Another), which challenges the Bombay Prohibition Act, 1949 as amended from time to time along with Ordinance 15 of 1981 which amended the Bombay Prohibition Act, 1949 and Section 49 added by reason of which the State was granted exclusive privilege of importing, exporting, transporting, manufacturing, bottling, selling, buying, processing or using any intoxicant. Thereafter, the Bombay Rectified Spirit (Transport in Bond) Rules, 1951 were amended and transport fee was increased from the rate of 17 paise to the rate of Rs. 1.25 paise. Thereafter, the Bombay Rectified Spirit (Transport in Bond) Amendment Rules, 1982 were amended and the transport fee was reduced from Rs. 1.25 per litre to 0.40 paise per litre. Then there is Writ Petition No. 1892 of 1973 (Hindustan Polymers Ltd v. State of A. P.) which seeks a declaration that alcohol plant of the petitioner company is not covered by the A.P. Excise Act, 1968, A.P. Distillery Rules, 1970 and A.P. Rectified Spirit Rules, 1971 and further to declare that the alcohol plant of the company is not a 'distillery' within the meaning of the said expression under the A.P. Distillery Rules and therefore, the Distillery Rules have no application thereto. It seeks also on order to restrain from interfering with and/or regulating and controlling the production,

distribution, movement and supply of alcohol from the alcohol plant of the company and also a writ of prohibition with the appropriate directions. Civil Appeal No. 4348 of 1984 also challenges the A.P. Excise Act, 1968 and A.P. Distillery Rules. Similar is the position in C.A. Nos. 466-67 of 1980 which challenge the Tamil Nadu Prohibition Act.

2. The main question that falls for consideration in these matters is whether the vend fee in respect of the industrial alcohol under different legislations and rules in different States is valid. The question is - is the vend fee and impost leviable or extractable by the States under different Acts. The question mainly involved in all these matters is a common question of law but we will have to deal with diverse factual situations as well as the particular provisions of the various Acts. The questions with which we are mainly concerned are the following :

(i) whether the power to levy excise duty in case of industrial alcohol was with the State legislature or the Central legislature ?

(ii) what is the scope and ambit of Entry 8 of List II of the Seventh Schedule of the Constitution ?

(iii) whether, the State Government has exclusive right or privilege of manufacturing, selling, distributing, etc. of alcohols including industrial alcohol. In this connection, the extent, scope and ambit of such right or privilege has also to be examined.

3. It is necessary to bear in mind that in the last four to five decades, there has been a tremendous change in the industrial horizon of this country. During the initial stages of the Constitution, the only well-known industrial sectors in India were iron and steel, textiles, jute and cement. The rest of the production was raw materials geared to feed and supply the industrial base of the foreign power. After independence, an Industrial Policy Resolution was adopted to achieve rapid industrialization in a big way. In the last few decades, there has been a great transformation and tremendous upsurge not only in industry and commerce, but also in sophisticated technology and industries. The chemical, fertilizer, plastic and engineering industries are only some of the fields in industrial development. In this background, the views expressed previously relating to 'intoxicating liquor' and 'alcoholic liquor for human consumption' have to be borne in mind. It is, in this connection, also necessary to refer to Article 47 of the Constitution. The said article which deals with the duty of the State to raise the level of nutrition and the standard of living and to improve public health, enjoins that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. We were invited on behalf of the petitioners by Mr. Nariman, Mr. Divan, Mr. Banerjee, Mr. Baig and others that though this direction and this commitment to improvement of the standard of living must be kept in view but it must be borne in mind that this improvement can be achieved primarily by industrialisation involving increased production and employment and giving priority to the core sectors. Entry 52 of List I of the Seventh Schedule to the Constitution deals with "industries", the control of which by the Union is declared by Parliament by law to be expedient in the public interest. It is the contention of the petitioners and appellants that the Industries (Development and Regulation) Act, 1951 (hereinafter called the 'IDR Act') was enacted with a view to developing and controlling various important industries. Section 2 of the IDR Act declares that it is expedient in the public interest that Union should take under its control the industries specified in the First Schedule. The cases in this bunch are in respect of industries which are not concerned with potable alcohol for the purpose of human

consumption. These are predominantly and primarily concerned with using ethyl alcohol (rectified spirit) as an industrial raw material. This industrial alcohol is required as an input for further manufacture of downstream products. For this purpose, some of the industries have their captive plants. Reference in this connection may be made and our attention was drawn to the report of the Alcohol Committee, 1956. This Report indicates that -

- (a) that industrial alcohol is an input and should be available at reasonable price,
- (b) there should be uniform railway freight,
- (c) larger capacities of molasses etc., should be available, and
- (d) uniform taxation policies are essential for the development of these industries.

4. In order to appreciate the controversy in these matters, it is, therefore, necessary to keep these objectives in mind. In these matters, this Court is concerned with the taxing power of the States to impose and levy excise duty on industrial alcohol and/or imposts as vend fees. This has been, and as has been noticed hereinbefore, claimed as a part of the exclusive privilege of the States to impose a levy as a consideration or price for manufacturing of and/or dealing with industrial alcohol. It is essential that there should be uniformity in the industry so that these are free from the vagaries and arbitrary and differential treatment meted out from State to State and even in the same State from time to time. Arbitrary and excessive imposts under the so-called privilege are a great disincentive for development of industries in the public interest and for industrial development in general and can render units unviable and sick.

5. In the above background, it is necessary to refer to certain facts and as such it would be appropriate to refer to the facts and contentions in Writ Petition No. 182 of 1980, that is, Synthetics & Chemicals Ltd. v. State of U. P., which is under Article 32 of the Constitution, filed by M/s. Synthetics and Chemicals Ltd. - a registered company in Bombay, and one Mr. A. K. Roy, Director and shareholder of the said company. The respondents therein are the State of Uttar Pradesh and the Excise Commissioner, Uttar Pradesh.

6. In the said writ petition, a notification of the State of Uttar Pradesh, being No. 484 OE/XIII-330/79, dated Lucknow May 31, 1979 was made in exercise of the power under sub-section (1) of Section 40 of the U.P. Excise Act, 1910 (hereinafter referred to as 'the U.P. Act') read with clause (d) of sub-section (2) of the said section.

7. However, in order to appreciate the position, we should bear in mind the history of the legislative powers and different lists in the Seventh Schedule, regarding impost in respect of industrial alcohol. It appears that local legislatures of Uttar Pradesh had enacted the United Provinces Excise Act, 1910 being Act 4 of 1910, and it received the assent of the Governor on December 18, 1909 and of the Governor General on February 14, 1910. Before 1920 there was as such no distinct distribution of legislative subjects between the Central legislature and the State legislatures. It appears that the local legislatures enacted with the assent of the Governor-General, Excise Acts imposing duties and regulating production, supply and distribution of alcoholic liquors including denatured spirits and methylated spirits. These were done under the Indian Councils Act, 1861 and the Indian Councils Act, 1909. The provisions of the Indian Councils Act, 1861 were initially applicable only to the Presidencies of Fort St. George and Bombay, but were later made applicable to other provinces by virtue of the Indian Councils Act, 1892 and 1909.

8. Section 43 of the Indian Councils Act, 1861 enjoined that it shall not be lawful for the Governor in Council of either of the Presidencies, except with the sanction of the Governor-General, previously communicated to him, to make regulations or take into consideration any law or regulation for any of the purposes mentioned therein and one of the purposes, inter alia, mentioned was, anything affecting the public debt of India or the customs duties, or any other tax or duty then in force and imposed by the authority of the Government of India for the general purposes of such government.

9. The Government of India Act, 1915 was amended from time to time with a view to consolidate and amend the enactments relating to the Government of India. The Governor-General-in-Council with the sanction of the Secretary of State-in-Council made Devolution Rules. Rule 3(1) thereof provided for distinguishing the functions of the local governments and local legislatures of governors' provinces and of the province of Burma from the functions of the Governor-General-in-Council. It was provided that any matter which is included in the list of provincial subjects set out in Part II of the Schedule I of the said Act shall, to the extent of such inclusion, be excluded from any central subject of which, but for such inclusion, it would form part. Part II of the Government of India Act, 1915 provided that any matter which is included in the provincial subjects set out in Part II of the Schedule I shall, to the extent of such inclusion, be excluded from any central subject of which, but for such inclusion, it would form part. Part II dealt with provincial subjects. Item 16 of Part II provided as under :

"Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs, and the levying of the excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export."

10. It appears that the Government of U.P. levied a vend fee on denatured spirit for the first time @ 8 annas per bulk gallon, vide notification dated January 18, 1937 under Section 40(2) of the U.P. Excise Act, 1910. It was levied as a duty. By this notification Rule 17(2) was added which enjoined that in case of issues from a distillery a vend fee of annas 8 per bulk gallon shall be payable in advance before the spirit is issued. The fee was not made chargeable in case of issues to hospitals, dispensaries and other charitable and educational institutions up to a quantity allowed to be issued by the excise authorities, and also on the issues for export out of the provinces.

11. Thereafter, on April 1, 1937 the Government of India Act, 1935 came into effect. The federal legislative list in the Seventh Schedule to the said Act contained Entry 45 which included duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption. The provincial legislative list being List II of the Seventh Schedule, contained Entry 31 on intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to certain provisions. It also included Entry 40 which was on duties of excise including, inter alia, all these items and alcoholic liquors, opium, Indian hemp and medicinal and toilet preparations containing alcohol.

12. It was contended on behalf of M/s. Synthetic Chemicals Ltd. that the duties previously levied by the local legislatures continued in force by virtue of Section 143(2) of the Government of India Act, 1935 only if these were levied before January 31, 1935, and that only these duties were to be so continued until provisions to the contrary were made by the Federal legislature.

13. The Constituent Assembly which derived from the people all power and authority, was convened. On August 15, 1947 the British Parliament passed the Indian Independence Act, 1947 making provisions for the setting up in India of two independent dominions. Under Section 6(1) of the said Act, the legislature of each of the new dominions was to have full powers to make laws for that dominion including laws having extra-territorial operations. Under Section 8(2) read with Section 9(1) of the Indian Independence Act, 1947 the Governor-General adopted the provisions of the Government of India Act, 1935. It appears that on April 3, 1948 the Constituent Assembly acting as the Dominion legislature passed the Indian Power Alcohol Act, 1948 which received the assent of Governor-General on the same day. By this Act, the Central Government took under its control the Power Alcohol Industry. This was in pursuance of the declaration made by the Dominion legislature under Entry 34 of List I of the Seventh Schedule to the Government of India Act, 1935. The entry was : "Development of Industries where development under Dominion control is declared by Dominion law to be expedient in public interest". "Power Alcohol" was defined as meaning ethyl alcohol containing not less than 95.5 per cent volume of ethanol measured at 60 F, corresponding to 74.4 over proof strength.

14. It may be mentioned that rectified spirit is ethyl alcohol or ethanol with 96 per cent alcohol v/v. On dehydration, ethyl alcohol with 99.5 per cent volume of ethanol is produced. It was suggested that take over by the Dominion of the potable liquor industry was precluded by virtue of Entries 29 and 31 of List II read with Entry 34 of List I of the Government of India Act, 1935. It may be mentioned that the word 'industries' is the analogous provision in the State list under the Constitution of India, hence, the meaning given to it in that list, must be applied. According to the petitioners/appellants, the expression 'industries' has been given a restricted meaning so as not to trench on the State's power with respect to other industries specifically assigned to the State under other entries in the State list. See *Calcutta Gas Co. v. State of West Bengal*. (1962 Supp 3 SCR 1 : AIR 1962 SC 1044)

15. By virtue of the Constitution of India which came into effect from January 26, 1950 the powers of the legislation in respect of alcohol were distributed between List I and List II of the Seventh Schedule to the Constitution. Duties of excise on tobacco and other goods manufactured or produced in India except, inter alia, alcoholic liquors for human consumption, and opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any such substance were given to Parliament under Entry 84, List I. But duties of excise on goods manufactured or produced in the State and countervailing duties at the similar rates, inter alia, alcoholic liquors, the State was given power by Entry 51 of List II to legislate. By Entry 8 of List II, States were given power to legislate on liquors, that is to say production, manufacture, processing, transport, purchase and sale thereof.

16. On or about May, 8, 1952 the Parliament enacted the Industries (Development and Regulation) Act, 1951. Chapter III-B of the said Act contains Section 18-G whereby the Central Government was empowered for securing equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry to provide for regulating the supply and distribution thereof, and trade and commerce therein by a notified order. The notified order was also to provide for controlling the prices at which such article or class of articles could be bought or sold. The said Act was amended in 1956. Item 26 was inserted in the First Schedule to the said Act and empowered the Central Government to control the Fermentation Industries including alcohol industries. Item 26 was as follows :

"26. Fermentation Industries.

(1) Alcohol

(2) Other products of Fermentation Industries."

17. The Government of India issued licences for the manufacture of alcohol based industries.

18. It is asserted by M/s. Synthetics and Chemicals Ltd. that one Tulsidas Kilachand, who had promoted the said company, was invited by the U.P. Government to set up a synthetic rubber factory in the State of Uttar Pradesh. It is stated that the Government of Uttar Pradesh assured the said Tulsidas Kilachand of the supplies of alcohol necessary for the factory up to 20 million gallons, on payment only of Rs. 7.50 kilo litre as administrative charges. It is the case of M/s. Synthetics & Chemicals that there was no assertion or claim or privilege on behalf of the State Government in respect of denatured spirit nor was the said company or its promoters informed that there might be a charge of rental or consideration for parting with any such privilege.

19. On December 30, 1960 the Government of U.P. issued a notification under Section 4(2) of the U.P. Excise Act, 1910 by which all "rectified, perfumed, medicated and denatured spirits wherever made" was included under the definition of 'foreign liquor'. Thereafter, the said notification was embodied in Rule 12 of the U.P. Excise Rules.

20. On or about November 28, 1952 the Power Alcohol Authority and Excise Commissioner of U.P. issued an order for allotment of alcohol to M/s. Synthetics & Chemicals Ltd. and also provided a condition that "the denatured alcohol meant for supply to M/s. Synthetics & Chemicals Ltd. is exempted from payment of vend fee". Paragraph 2 of the said order provided that M/s. Synthetics & Chemicals Ltd. shall pay an administrative charge at the rate of Rs. 7.50 per kilo litre of denatured alcohol. The denatured alcohol meant for supply to M/s. Synthetics & Chemicals Ltd. was exempted from payment of vend fee. It was stipulated that alcohol shall be denatured with 5 per cent ethyl ether or 0.2 per cent crotonaldehyde at distilleries.

21. It appears that in May 1963 M/s. Synthetic & Chemicals Ltd. established a factory in Bareilly. Industrial alcohol is said to be one of the basic raw materials for the manufacture of synthetic rubber. Accordingly, the Government of U.P. on or about July 30, 1963 issued a notification excluding from the levy of vend fee the alcohol issued to industries engaged in the manufacture of synthetic rubber on terms and conditions the State Government might determine.

22. Rule 17(2) was accordingly modified. On or about November 3, 1972 the Government of U.P. issued a notification (being U.P. Excise Third Amendment Rules, 1972) substituting a new Rule 17(2) which is now embodied in para 680(2) of the U.P. Excise Manual at page 201. In the new rule, vend fee @ Rs. 1.10 per bulk litre was imposed on denatured spirit without examining industries engaged in the manufacture of synthetic rubber. Supplies to the hospitals of certain quantity, and exports out of the State were exempted.

23. In December 1972 when a demand was raised for payment of the vend fee, it was asserted on behalf of M/s. Synthetic & Chemicals that they had to close down their factory, and filed a Writ Petition No. 8069 of 1972 in the Allahabad High Court challenging the validity of the notification dated November 30, 1972 whereby vend fee on denatured spirit was introduced for the first time. The Division Bench of the Allahabad High Court vide judgment dated March 24, 1973 struck down the said notification holding that the vend fee could not be justified either as a tax or fee or as excise duty. Relying on the decision of this Court in the case of Nashirwar v. State of M. P. ((1975) 1 SCC

29 : (1975) 2 SCR 861 : AIR 1975 SC 360) and stating the same in the Preamble to the Act, the U.P. legislature passed Act 5 of 1976 being U.P. Excise Amendment (Re-enactment and Validation) Act, 1976 inter alia, introducing Sections 24-A and 24-B in the U.P. Excise Act, 1910 and making other amendments with retrospective effect. Sections 24-A and 24-B are as follows :

"24-A. (1) Subject to the provisions of Section 31, the Excise Commissioner may grant to any person a licence or licence for the exclusive or other privilege :

(a) of manufacturing or of supply by wholesale, or of both; or

(b) of manufacturing or of supplying by wholesale, or of both and selling by retail; or

(c) of selling by wholesale (to wholesale or retail vendors); or

(d) of selling by retail shops (for consumption 'off' the premises only);

any foreign liquor in any locality.

(2) The grant of licence or licences under clause (d) of sub-section (1) in relation any locality shall be without prejudice to the grant of licences for the retail sale of foreign liquor in the same locality in hotels and restaurants for consumption in their premises.

(3) Where more licences than one are proposed to be granted under clause (d) of sub-section (1) in relation to any locality for the same period advance intimation of the proposal shall be given to the prospective applicants for every such licence.

(4) The provisions of Section 25, and proviso to Section 39 shall apply in relation to grant of a licence for an exclusive or other privilege under this section as they apply in respect of the grant of a licence for an exclusive privilege under Section 24.

24-B. For the removal of doubts, it is hereby declared :

(a) that the State Government has an exclusive right or privilege of manufacture and sale of country liquor and foreign liquor;

(b) that the amount described as licence fee in clause (c) of Section 41 is in its essence the rental or consideration for the grant of such right or privilege by the State Government;

(c) that the Excise Commissioner as the head of the Excise Department of the State shall be deemed while determining or realising such fee, to act for and on behalf of the State Government."

24. It is stated that in May 1976 the State of U.P. filed an appeal against the decision of the Allahabad High Court in Writ Petition No. 8069 of 1972; and that between 1976 and 1978, relying on the judgment of the Allahabad High Court certain wholesale dealers in denatured spirit filed writ petitions in the High Court of Allahabad claiming refund of vend fee already paid by them. These writ petitions were heard and allowed by the learned Single Judge of the Allahabad High Court. Against the judgment of the Single Judge, special appeals to a Division Bench were preferred by the

State of U.P. and all were allowed on October 6, 1978, relying upon Sections 24-A and 24-B of the said Act.

25. In 1976, the State Government issued the U.P. Licence for the possession of Denatured Spirit and Special Denatured Spirit Rules, 1976 requiring a licence for possession of denatured spirit specially denatured spirit for industrial purposes. "Special Denatured Spirit" was defined as "Spirit rendered unfit for human consumption". Licences for possession of denatured spirit including Specially Denatured Spirit for industrial purposes were to be of 3 kinds, according to the parties :

(1) Form F.L. 39 for use in industries in which alcohol is destroyed or converted chemically in the process into other product and the product does not contain alcohol, such as ether, styrene, butadiene, acetone, polythene etc. (2) Form F.L. 40 for use in industries in which alcohol is used only as a solvent or processing agent and the product does not contain alcohol, which is generally recovered for re-use, such as cellulose and its derivatives, pectin etc. (3) Form F.L. 41 for use in industries in which alcohol is used directly or alcohol is used as solvent or vehicle and appears in the final produce to some extent such as lacquers, varnishes, polishes, adhesives and anti-freezers etc.

26. The Allahabad High Court in W.P. No. 8096 of 1972, referred to hereinbefore, held that the State did not have the legislative competence to impose a tax under Entry 8 of List II of the Seventh Schedule to the Constitution following the decision of Sheopat Rai v. State of U. P. (1972 All LJ 1000 (All)) The High Court held that the power of regulation does not carry with it the power of taxation and thus vend fee could not be justified. The High Court also held that the levy could not be justified as a fee as there was no quid pro quo. It appears that in view of the judgment of the High Court, a telegram was issued to the distilleries by the Excise Commissioner that vend fee should not be charged from the petitioner. Instead the State Government resorted to imposition of sales tax.

27. It may be mentioned herein that this decision of the Allahabad High Court was set aside by this Court by a bench of two Judges in State of U. P. v. Synthetics & Chemicals ((1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614). In view of the fact that review petition in respect of the same is pending, it may be necessary to refer to the said decision. This Court held that the levy of vend fee is for parting with the exclusive right of the State with regard to intoxicating liquors and for conferring a right on the licensees to sell such liquors. A conspectus of the decisions of this Court, according to the said decision, establishes : (i) that there is no fundamental right of a citizen to carry on trade or to do business in liquor because under its police power, the State can enforce public morality, prohibit trade in noxious or dangerous goods; (ii) the State has power to enforce an absolute prohibition on manufacture or sale of intoxicating liquors pursuant to Article 47 of the Constitution; and (iii) the history of excise laws in the country shows that the State has the exclusive right or privilege to manufacture or sell liquors. Reference was made to the decision of this Court in the State of Bombay v. F. N. Balsara (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361). This Court further held that the term "intoxicating liquor" is not confined to potable liquor alone but would include all liquors which contain alcohol. The term "liquor" according to the said decision, used in Abkari Acts not only covers alcoholic liquor which is generally used for beverage purposes and which produces intoxication but would also include liquids containing alcohols. It was further held that the power to regulate the notified industries is not exclusively within the jurisdiction of Parliament as Entry 33 in the Concurrent List enables a law to be made regarding production, supply and distribution of products of notified industries. The exclusive power of the State to

provide for manufacture, distribution, sale and possession of intoxicating liquors is vested in the State. The power of the State Government to levy a fee for parting with its exclusive right regarding intoxicating liquors has been recognised as could be seen from the various State Acts regulating the manufacture, sale, etc. of intoxicating liquors. It was further held that the term "foreign liquor" cannot be given a restricted meaning because the word consumption cannot be confined to consumption of beverages only. When liquor is put to any use such as manufacture of other articles, the liquor is all the same consumed. The State is empowered to declare what shall be deemed to be country liquor or foreign liquor. "Foreign liquor" is defined as meaning all rectified, perfumed, medicated and denatured spirit wherever made. Therefore, this Court in that case held that the plea that the Excise Commissioner had no right to accept payment in consideration for the grant of licence for the exclusive privilege for selling in wholesale or retail, foreign liquor which includes denatured spirits cannot be accepted. It was further held that the definition of "alcohol" includes both ordinary as well as specially denatured spirit. The specially denatured spirit for industrial purposes is different from denatured spirit only because of the difference in the quantity and quality of the denaturants. Specially denatured spirit and ordinary denatured spirit are classified according to their use and denaturants used. Therefore, the contention that specially denatured spirit for industrial purposes is different from the ordinary denatured spirit has no force, according to the said decision. Reference was made to the decisions of this Court in *Har Shankar v. Dy. Excise & Taxation Commissioner* ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121).

28. In this connection, it may be necessary to refer to the observations of this Court in *Har Shankar* case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121), where Chandrachud, J. (as the learned Chief Justice then was) stated : (SCC p. 758, para 53).

"In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in the *State of Bombay v. F. N. Balsara* (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361), *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer* (1954 SCR 873 : AIR 1954 SC 220), *State of Assam v. A. M. Kidwai, Commissioner of Hills Division and Appeals, Shillong* (1957 SCR 295 : AIR 1957 SC 414), *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam* (1958 SCR 1240 : AIR 1958 SC 398), *Amar Chandra Chakraborty v. Collector of Excise, Government of Tripura* ((1972) 2 SCC 442 : (1973) 1 SCR 533 : AIR 1972 SC 1863) and *State of Bombay v. R. M. D. Chamarbaugwala* (1957 SCR 874 : AIR 1957 SC 699), as interpreted in *State of Orissa v. Harinarayan Jaiswal* ((1972) 2 SCC 36 : (1972) 3 SCR 784 : AIR 1972 SC 1816) and *Nashirwar v. State of M. P.* ((1975) 1 SCC 29 : (1975) 2 SCR 861 : AIR 1975 SC 360). There is no fundamental right to do trade or business in intoxicants. The State under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession."

29. Though most of the cases dealt with the right of the State Government as regard auction of country liquor, in *Balsara* case (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361), *Nashirwar* case ((1975) 1 SCC 29 : (1975) 2 SCR 861 : AIR 1975 SC 360) and *Har Shankar* case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121), this Court was concerned with the right of the State Government over foreign liquor. After considering all the decisions of five Constitutional Benches, Chandrachud J., summed up the position at page 274 of the report in *Har Shankar* Case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121) as follows : (SCC p. 755, para 47).

"These unanimous decisions of five Constitution Benches uniformly emphasised after a careful consideration of the problem involved that the State has the power to prohibit trades which are injurious to the health and welfare of the public, that elimination and exclusion from business is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilized communities."

30. Review petition has been moved by Synthetics & Chemicals Ltd. which was purchaser or user and not manufacturer or dealer. It is contended that the Synthetics & Chemicals Ltd. were never manufacturers of denatured spirit and they were and have been purchasers of denatured spirit. It is contended that this Court in Synthetics & Chemicals Ltd. case ((1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614) had proceeded on the basis that State's privilege is with respect to manufacture or sale of foreign liquor or denatured spirit.

31. It is contended that they were not liable to pay the vend fee. The judgment aforesaid had not dealt with that submission and therefore, it was claimed that there was an error and that this judgment should be reviewed. It was contended that the fee charged is not a vend fee but fee in respect of licence for possession of denatured spirit. It was contended that the judgment has not held that the purchasers are liable to pay vend fee. The State's appeal should have been dismissed and the petitioners appeal should have been allowed, it was pleaded in the review petition. There was an error, it was contended.

32. It may be at the outset made clear that in these matters, we will dispose of the contention whether vend fee is leviable in respect of industrial alcohol. If it is so leviable, who should actually pay or from whom the same should be realised, would not be the subject matter of this adjudication. Whether the manufacturer or the purchaser or the user should pay them, must be decided in separate appropriate proceedings, if necessary.

33. In order to complete the narration of events, however, it may be mentioned that Ordinance 6 of 1973 was promulgated by the Government of U.P. purporting to amend the U.P. Sales Tax Act, 1948 so as to authorise the State Government to impose sales tax on alcohol at the rate up to Rs. 2 per litre. By the said notification, the first schedule to the Act was amended and the new entry read as follows :

"Spirits and spiritous liquors of all kinds including the rectified spirit, methyl alcohol and absolute alcohol but excluding denatured spirit and country liquor."

34. Ordinance 9 of 1974 being the Uttar Pradesh Sales of Motor Spirit and Diesel Oil Taxation (Amendment) Ordinance, 1974 was promulgated by the Government of U.P. By virtue of the amendment, the definition of alcohol in Section 2 of the U.P. Sales of Motor Spirit and Diesel Oil Taxation Act, 1939 (U.P. Act 1 of 1939) was amended as follows :

"(aaaa) Alcohol means ethyl alcohol not being alcoholic liquor for human consumption and includes rectified spirit, absolute alcohol."

35. Notification was issued thereafter by Government of U.P. in exercise of power under Section 3(1) of U.P. Sales of Motor Spirit and Diesel Oil Taxation Act, 1939. Several other notifications were issued. This Ordinance was struck down by the Division Bench and the government was made

liable to refund. Writ Petition was filed by Synthetics & Chemicals Ltd. Thereafter, no appeal was filed by the State Government. The other facts are not relevant for the present controversy. There was an application challenging the purchase tax. The State of U.P. filed an appeal against the judgment and order dated March 24, 1973 of the Division Bench of the Allahabad High Court in Writ Petition No. 8069 of 1972 striking down the vend fee notification. The appeal was numbered as Civil Appeal No. 1130 (NCL) of 1976. After the sales tax levy was struck down the government proposed a purchase tax. Aggrieved by the aforesaid Act, writ petition was filed, and the hearing of the petition had been stayed by the order of this Court. Meanwhile, certain wholesale dealers in denatured spirit filed writ petitions in the High Court of Judicature at Allahabad, claiming refund of the vend fee paid by them. Against the judgment of the High Court of Allahabad dated October 6, 1978, appeals were admitted being Civil Appeal Nos. 2191-98 of 1978. All these have been disposed of by the bench of two learned Judges of this Court, as mentioned hereinbefore. It appears that Kesar Sugar Works Ltd. filed writ petition challenging the validity both of licence fee and vend fee on the ground that the fees charged have all the characteristics of a duty of excise which is beyond the legislative competence of the State and that the alcohol industry is covered by the IDR Act. Writ Petition Nos. 4663-4664 of 1978 were also disposed of by the judgment of this Court in Synthetics & Chemicals Ltd. ((1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614). Notification was issued thereafter by the Government of U.P. in 1979 in exercise of powers under Section 40, sub-section (1) of the U.P. Excise Act of 1910, read with clause (d) of sub-section (2) of the said section, amending the U.P. Excise (Amendment) Rules, 1979. By virtue of this amendment, Rule 17 was substituted and in the case of F.L. 39 licence, vend fee was to be so charged that the amount of vend fee and purchase together did not exceed 25 paise per bulk litre. It is not necessary to set out in detail the exact provisions. Another notification was issued. It was challenged in the High Court. It was kept pending.

36. The other matter herein is Writ Petition Nos. 3163-64 of 1982 (All India Alcohol Based Industries Development Association v. State of Maharashtra) which challenges the amendment to Section 49 of the Bombay Prohibition Act, 1949. It may be relevant to refer to the said section as amended in 1981. The section is titled "Exclusive privilege of government to import etc., intoxicants and fees levied include rent or consideration for grant of such privileges to persons concerned". In this connection, it is significant to refer to the Statement of Objects and Reasons for the amendment. The section is as follows :

"49. Notwithstanding anything contained in this Act, the State Government shall have the exclusive right or privilege of importing, exporting, transporting, manufacturing, bottling, selling, buying, possessing or using any intoxicant, hemp or toddy, and whenever under this Act or any licence, permit, pass, thereunder any fees are levied and collected for any licence, permit, pass, authorisation or other permission given to any person for any such purpose, such fees shall be deemed to include the rent or consideration for the grant of such right or privilege to that person by or on behalf of the State Government."

37. The power was contained in the Bombay Prohibition Act, 1949 which was an Act to amend and consolidate the law relating to the promotion and enforcement of and carrying into effect the policy of prohibition and also the Abkari law in the State of Bombay. It may be mentioned that the Bombay Prohibition Act, 1949 was brought into force on May 25, 1949. Then there was the Bombay Rectified Spirit (Transport-in-Bond) Rules, 1951 brought into force. On October 23, 1981 the amendment was made introducing Section 49.

38. The provision of the Andhra Pradesh Act was challenged by the impugning the allotment of alcohol under the Andhra Pradesh Excise Act 17 of 1968. The Andhra Pradesh Act received the assent of the President on August 26, 1968. This was an Act to consolidate and amend the law relating to production, manufacture, possession, transport, purchase and sale of intoxicating liquors and drugs, the levy of duties of excise and countervailing duties of alcoholic liquor for human consumption and opium, Indian hemp and other narcotic drugs and narcotics and to provide for matters connected therewith in the State of Andhra Pradesh.

39. Writ Petition No. 1892 of 1973 - Hindustan Polymers Ltd. v. State of Andhra Pradesh challenges the Andhra Pradesh Distillery Rules, 1970 and Andhra Pradesh Rectified Spirit Rules, 1971. The Tamil Nadu Prohibition Act is also challenged in C.A. Nos. 466-67 of 1980 as well as Writ Petition No. 4501 of 1978. In all these the point is similar and we have heard learned counsel and respective Advocate-Generals. Appearing for the petitioners S/Shri Nariman, Divan, Baig and Banerjee and others have made their submissions. We have also heard Mr. Trivedi, learned Additional Advocate-General of U.P., Mr. Yogeshwar Prasad, Dr. Singhvi, Mr. Sanghi, learned Advocate-Generals of Andhra Pradesh and other States. We had also the advantage of the submissions made by learned Attorney-General on behalf of Union of India.

40. It was submitted in the statement on behalf of Union of India that the legislative competence of the State enactment in the various States will have to be determined by reference to following entries in List I of the Seventh Schedule - Entries 7, 52, 59, 84, 96, 97 and entries in List II, being 8, 24, 26, 27, 51, 52, 54, 56, 62 and entries in List III being 19 and 33. It was urged that there is a dichotomy between Entry 84 List I and Entry 51 of List II but this would not control the interpretation of other entries. There is no such dichotomy in Entry 8. It has also been stated on behalf of the Union of India that while opium was in Entry 19 of List III and Entry 59 of List I of the Seventh Schedule, it means that Parliament will have power with regard to opium. But the power to levy excise duty on opium is given to the State, similarly medicinal and toilet preparations which contain alcohol and are fit for human consumption, the power of levy excise duty is given to Parliament and not to the State legislature. Entry 8 of List II similarly is not subject to Entry 52 of List I for the reason that the aspect with regard to subject matters of these two entries are different, it was submitted. The aspect in List I Entry 52 is industry while that in Entry 8 of List II is intoxicating liquor. Entry 8 is, therefore, to be read on its own terms. The power to levy taxes is to be read from the entry relating to taxes and not from the general entry. Exception in Entry 50 of List II where tax on mineral rights is subject to any limitation imposed by Parliament relating to mineral development, and this power of Parliament is in general entry that is Entry 54 of list I. According to Union of India, none of the taxing entries in List II is controlled by Entry 52 of List I. Union of India stated that 'industry' is a topic of legislation. Certain entries are left to Parliament and certain others are left to State legislatures. Identifying of entries is by reference to a declaration under Entry 7 of List I and Entry 52 of List I. The aspect of legislation with regard to subject matter of entries will be topic 'industry'. On the other hand, the subject matter of legislation under Entry 8 of List II will be topic 'intoxicating liquors'. Therefore, there is no conflict according to the Union of India.

41. The only question which has to be determined is whether intoxicating liquor in Entry 8 in List II is confined to potable liquor or includes all liquors. According to the Union of India, in view of the difference of language in Entry 8 and Entry 51 of List II, it is reasonably possible to take the view that intoxicating liquors include both liquors. It was submitted by the Union of India that there are no grounds for overruling Balsara case (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361) decided in 1951 after 38 years particularly when it has been followed and applied in later decisions. In that case it upheld the power of the States to completely prohibit, manufacture, sell etc. potable

liquor, it struck down the provisions of the Bombay Act insofar as it imposed restrictions on medicinal and toilet preparations as violative of Article 19(1)(f) of the Constitution. It is stated that this decision had proceeded on the basis that there could not be a complete prohibition in regard to medicinal preparations containing alcohol. Hence, it was submitted that so far as alcohol not fit for human consumption is concerned, it cannot be held that trade in such an article cannot be considered to be a noxious trade. It will be a noxious trade only where it is produced or manufactured for purposes of human consumption. It was submitted that in *Indian Mica and Micanite Industries v. State of Bihar* ((1971) 2 SCC 236 : 1971 Supp SCR 319 : AIR 1971 SC 1182) this Court was dealing with denatured spirit and had held that the Bihar Orissa Excise Act, insofar as it related to denatured spirit, was regulating trade and business in public interest; and that Entry 8 of List II comprehends all liquors containing alcohol. The State's privilege to completely prohibit or farm out liquor containing alcohol for human consumption does not comprehend, according to the Union of India, a similar right of a State with regard to other intoxicating liquids containing alcohol. According to the Union of India, to so prohibit or collect fee for farming out, would be unconstitutional under Article 19(1)(g) of the Constitution on the same principle on which the provisions of the Bombay Act were struck down in *Balsara case* (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361). It was further stated on behalf of Union of India that Parliament has legislative competence with regard to power alcohol providing for levy of central excise duty. See the Central Excises and Salt Act, 1944, Schedule 1, Item 6 : Motor Spirit. Similarly, Parliament has legislated the Central Excise Tariff Act, 1985 - tariff Item No. 22.04. The said item reads :

"Ethyl alcohol, of any grade (including such alcohol when denatured or otherwise treated), which either by itself or in admixture with any other substance, is suitable for being used as fuel for Sparkignition engines."

42. It was stated that under Article 277 of the Constitution, any taxes, duties, cesses or fees which immediately before the commencement of the Constitution, were being lawfully levied by the Government of any State or municipality or other local authority or body for the purpose of the State, municipality, district or other local area may, notwithstanding that these taxes, duties, cesses/or fees are mentioned in the Union list, continue to be levied and to be applied for the same purpose until provisions to the contrary are made by Parliament by law. According to the Union of India, there was a similar provision in the Government of India Act, 1935 [See Section 143(2)]. Reference was made to the decision in *Town Municipal Committee, Amraoti v. Ramachandra Vasudeo Chimote* (AIR 1964 SC 1166 : (1964) 6 SCR 947 : (1964) 53 ITR 444).

43. Learned Attorney General drew our attention to the fact that Parliament has exclusive power to levy duties of excise on good manufactured or produced in India including medicinal and toilet preparations containing alcohol or opium or Indian hemp or other narcotic drugs. But Parliament has no legislative competence to levy excise duty on (a) alcoholic liquor for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics (Entry 84 of List I). The State legislature has legislative competence to levy excise duty on the lowing goods manufactured or produced in the State and countervailing duties on similar goods manufactured in India - (a) alcoholic liquor for human consumption; (b) opium, Indian hemp and narcotics. But learned Attorney General emphasised that State legislature has no power to levy excise duty on medicinal and toilet preparations which contain alcohol or opium or Indian hemp and other narcotic drugs in such medicinal and toilet preparations. Under Entry 51 of List II the State legislature, it was submitted by him, had no power to levy excise duty on industrial alcohol as the latter is not fit for human consumption. State legislature has power to levy taxes on entry of goods in local areas for consumption, use or sale therein. This will include taxes on entry of all alcohol. See Entry 52 of List

II. The State legislature has further power to levy taxes on goods carried by road or by inland water. The goods therein will include both alcohol fit for human consumption as well as alcohol not fit for human consumption. See Entry 56 of List II of the Seventh Schedule. State legislature will have to levy taxes on possession of alcoholic liquors fit for human consumption because these are luxuries. But alcohol not fit for human consumption are not luxuries and as such the State legislatures, according to learned Attorney General, will have no power to levy taxes on such alcohol. Parliament will have power to levy on all alcohol taxes not covered by any other entries in Lists I and II. See List I Entry 97.

44. The State legislature will have power to levy fee in respect of all alcohol. See Entry 66 read with Entry 6 of List II. State legislature has power to legislate on the topic 'intoxicating liquors' under Entry 8 of List II. It being a general entry, will not comprehend a power of taxation but will comprehend a power to levy fee read with Entry 66. According to the learned Attorney General, with regard to industries, the control of which by the Union is declared by Parliament by law to be expedient in public interest, Parliament will have exclusive legislative competence. See Entry 52 of List I. This power includes the power to declare by Parliament that control by the Union of Industries relating to all types of alcohol is expedient in public interest. Once Parliament makes such a declaration, the State legislature will be denuded of its power under List II, Entry 24 on the aspect 'industry' with respect to all subject matters. The power to collect the lump sum amount by way of auction by any right or otherwise conferring the right to sell alcohol is neither a power to levy tax nor a power to levy fee but it will fall within the legislative competence of the State legislature under Entry 8. But this power will extend only, according to learned Attorney General, to alcohol for human consumption. He said that there can be complete prohibition with regard to manufacture and sale of alcohol fit for human consumption because there is no fundamental right to carry on business in alcohol even for human consumption. And that this power to completely prohibit exists in the State as recognised by Article 47 of the Constitution. The State can, therefore, collect an amount called vend fee, shop rent etc. for conferring on a citizen the right to manufacture and sell alcoholic liquors if it is for human consumption. This power cannot extend to industrial alcohol or alcohol contained in the medicinal or toilet preparations. According to the learned Attorney General, there is no power to levy such rent or fee with regard to industrial alcohol because (a) industrial alcohol and alcoholic liquor for medicinal and toilet preparations cannot be completely prohibited; (b) as there is a right to carry on business in industrial alcohol any prohibition on manufacture of industrial alcohol would be violative of Article 19(1)(g) of the Constitution. Accordingly, in absence of a power to completely prohibit there will be no power to collect sums for conferring rights to manufacture or sell except the levy of taxes and fees.

45. On behalf of the State of U.P. both the learned Additional Advocate General Mr. Trivedi as well as Mr. Yogeshwar Prasad made exhaustive submissions and submitted that in order to appreciate the controversy it is necessary to realise that the real problem arises from the fact that the denaturants can be converted into renaturants in the illicit process. According to the counsel appearing in support of the levy, one bottle of spirit of Rs. 1.50 on renaturing yields a profit of Rs. 25 to Rs. 30 at least. In this connection, reference was made to the report of Baweja Committee. It was further emphasised that the victims are the weaker section and the sufferers are the "wailing workers, weeping wives and crying children", not only when the earning member dies, but in their life time, too, the alcohol consumes, snatches their two morsels, their health, nutrition, and standard of living. Reference was made to the observations of this Court in *P. N. Kaushal v. Union of India* ((1978) 3 SCC 558 : (1979) 1 SCR 122 : AIR 1978 SC 1457) where Krishna Iyer, J. referred to the utterances of George Bernard Shaw that drinking is the chloroform that enables the poor to endure the painful operation of living.

46. It was submitted on behalf of the State that the vend fee on denatured alcohol or denatured spirit or what is known as industrial alcohol has been challenged on mainly two grounds, namely, (a) States lack legislative competence, and (b) after the enactment of the IDR Act, 1951 the States' power is completely lost. The contention of the State was that there is no dichotomy between ethyl alcohol to be used for beverages and to be used for industrial purposes. In any case, the levy is on manufacture, according to Mr. Yogeshwar Prasad and Mr. Trivedi, learned Additional Advocate-General of U.P., of the ethyl alcohol; use is different, and the collection at a later stage. The levy was stipulated jointly or severally both under entries 8 of List II, Entry 51 of List II, Entry 33 of List III and what is described as police powers regulatory and other incidental charges, according to them. It was submitted that levy was justified being a regulatory power under Articles 19(6) and 19(6)(ii). It was further urged that State has a monopoly in alcohol trade; and that Article 31-C grants immunity to the challenge under Articles 13, 14 and 19 of the Constitution. It was submitted that quid pro quo was not necessary and even if it was necessary, the requirements were met. Under Article 298 trading powers of the State must be recognised, it was submitted, coupled with century old monopoly of the State in alcohol.

47. It was submitted that vend fee is a pre-Constitution levy. The U.P. Excise Act, 1910 and the vend fee levied thereunder were pre-Constitution Act/levy by a competent authority and will not cease to continue after the enforcement of the Constitution, merely because the authority lost its legislative competence over the subject matter. It was submitted that the levy was a pre-Constitution levy, so saved under Article 277 of the Constitution. According to the State of U.P., the law continued under Article 277 and is not a law either under Article 246 nor under Article 254 of the Constitution, so outside the purview of the Central Act.

48. At the outset, it may be noted that in view of the subsequent amendment and the additions to the levies it cannot, in our opinion, with legitimate force be contended that the levies which are sought to be impugned in the present litigation are pre-Constitutional levies. So, these submissions on behalf of the State do not require any serious consideration.

49. It was further submitted that the Union of India has no power to effect the levy as levy was pre-Constitutional law and further as the expression 'alcoholic liquor for human consumption' in List I and the residuary Entry 97 of List I of the Seventh Schedule, will not operate as against its own legislative intent. It was further urged that the IDR Act, 1951 does not preclude or eclipse the legislative powers of the State. This Act on its own terms, does not apply to the levy; these operate on different tracks, according to the counsel for the State. It was further urged that review was not maintainable. Reference was made to the distillation process and detailed submissions were made before us explaining the same.

50. It was submitted that sugarcane is raw material of sugar and manufacture of sugar molasses is the waste product. Molasses when mixed with yeast starts fermentation and alcohol is produced. 10-12 percent strength of alcohol is toxic to yeast, hence, fermentation stops. According to the State of U.P., so fermented alcohol has maximum 12 per cent strength of alcohol, the products being beer, cider, champagne, and liquor etc. For higher strength (above 12 per cent) distillation of fermented alcohol is necessary. By distillation process, firstly 96 per cent strength of alcohol is produced. It is known as ethyl alcohol or rectified spirit. Counsel for the State of U.P. submitted that this ethyl alcohol is potable and used both for beverage and industrial purposes; and that it is at this stage of manufacture that the charge of levy is made. It has to be stated in view of the language used in the specific provisions the levy is not on the manufacture of alcohol as such, therefore, in our opinion, these levies cannot in essence be sustained as duty of excise.

51. It was contended on behalf of the State that rectified spirit is diverted to different warehouses for being used as beverages (country liquor, foreign liquor) and industrial liquor. It was submitted that this potable alcohol can be used for industrial purposes, but for public welfare, a lower levy is charged and to prevent its misuse denaturants are added and for denaturing in public interest, the State has to incur expenses, cost of denaturants, process and regulation etc. However, this submission, by itself, does not help the controversy herein in essence. No attempt had been made on behalf of the State to indicate that the levy has any element of quid pro quo or certain element which can possibly have some correlation with the expenses incurred in those connection. It was submitted that ethyl alcohol is diluted to the requisite concentration for the concerned beverage and subjected to other processes like reduction, blending and flavouring etc. and ethyl alcohol is further distilled for higher concentration - 99.4 per cent power alcohol and 100 per cent absolute alcohol. It was submitted that no alcohol as such is fit for human consumption. It was contended that the effect is ultimate consumption, whether delayed or instantaneous. The effect of alcohol is fatal, it was stated; may be spread out on long span or instant depending upon the concentration, dose and the person drinking it. Sleeping pills are illustrative, overdose puts the man to eternal sleep. It is in this background that we were reminded that the State being a welfare State, would be guilty in levying a lower levy on the alcohol. It is the duty of the State for being a welfare State to denature by incurring extra cost and effort. The industry does not need the denaturing.

52. Our attention was drawn to various observations of Krishna Iyer, J. in P. N. Kaushal case ((1978) 3 SCC 558 : (1979) 1 SCR 122 : AIR 1978 SC 1457). There is indeed great deal of attempts made by some for wrong utilisation of alcohol and thereby endangering the community and people at large but the need to protect the community from the evil effects of drinking does not by itself empower the State to levy duty or impost of fee not warranted by the Constitution nor sanctioned by the specific provisions of the Constitution and the laws. It was submitted that industrial alcohol and denatured spirit are intoxicating liquor and/or alcoholic liquor for human consumption. These submissions were supported by reference to the dictionary meaning, organic chemistry, the definition in U.P. Excise Act, 1910 and various case laws. It is used as being consumed by humanity. The industry needs potable alcohol and the denaturants are not required by it rather some of them are avoided, according to the State of U.P. In particular industry they hamper the manufacture of the final product. Denatured spirit or industrial alcohol is basically potable alcohol; it is denatured in public interest to prevent its use as potable alcohol, according to the State of U.P. This alcohol cannot be treated differently from other alcohols only because some denaturants are added in public interest and welfare. It was submitted that the State has legislative competence to impose the levy since the impugned levy both on its language and in pith and substance legislation falling under, according to the State of U.P., Entry 8 List II - intoxicating liquor Entry 51, List II alcoholic liquor for human consumption. Counsel for the State emphasised the significant omission of the expression "fit for". What is required is intoxicating liquor and/or alcoholic liquor for human consumption, according to counsel for the State of Uttar Pradesh. Entry 33 List III - trade and commerce in, and the production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in public interest, and imported goods of the same kind as such products. Under its police powers the State has to regulate health, morality, welfare of society and incidental pauperism and crime it was submitted.

53. It was further submitted by the State that the State has exclusive right to deal in liquor. This power according to the counsel for the State, is reserved by and/or derived under Articles 19(6) and 19(6)(ii) of the Constitution. For parting with that right a charge is levied. It was emphasised that in a series of decisions some of which have been referred to hereinbefore, it has been ruled that the

charge is neither a fee nor a tax and termed it as privilege. The levy is on the manufacture, possession of alcohol. The rate of levy differs on its use, according to the State of U.P. The impost is also stipulated under the trading powers of the State under Article 298 and it was contended that the petitioners and/or appellants were bound by the terms of their licence. It was submitted that the Parliament has no power to legislate on industrial alcohol, since industrial alcohol was also alcoholic liquor for human consumption. Entry 84 in List I expressly excludes alcoholic liquor for human consumption; and due to express exclusion of alcoholic liquor for human consumption from List I, the residuary Entry 97 in List I will not operate as against its own legislative interest. These submissions have been made on the assumption that industrial liquor or ethyl alcohol is for human consumption. It is important to emphasise that the expression of a constitution must be understood in its common and normal sense. Industrial alcohol as it is, is incapable of being consumed by a normal human being. The expression 'consumption' must also be understood in the sense of direct physical intake by human beings in this context. It is true that utilisation in some form or the other is consumption for the benefit of human beings if industrial alcohol is utilised for production of rubber, tyres used. The utilisation of those tyres in the vehicle of man cannot in the context in which the expression has been used in the Constitution, be understood to mean that the alcohol has been for human consumption.

54. We have no doubt that the framers of the Constitution when they used the expression 'alcoholic liquor for human consumption' they meant at that time and still the expression means that liquor which as it is is consumable in the sense capable of being taken by human beings as such as beverage of drinks. Hence, the expression under Entry 84, List I must be understood in that light. We were taken through various dictionary and other meanings and also invited to the process of manufacture of alcohol in order to induce us to accept the position that denatured spirit can also be by appropriate cultivation or application or admixture with water or with others, be transformed into 'alcoholic liquor for human consumption' and as such transformation would not entail any process of manufacture as such. There will not be any organic or fundamental change in this transformation, we were told. We are, however, unable to enter into this examination. Constitutional provisions specially dealing with the delimitation of powers in a federal polity must be understood in a broad commonsense point of view as understood by common people for whom the Constitution is made. In terminology, as understood by the framers of the Constitution, and also as viewed at the relevant time of its interpretation, it is not possible to proceed otherwise; alcoholic or intoxicating liquors must be understood as these are, not what these are capable of or able to become. It is also not possible to accept the submission that vend fee in U.P. is a pre-Constitution imposition and would not be subject to Article 245 of the Constitution. The present extent of imposition of vend fee is not a pre-Constitution imposition, as we noticed from the change of rate from time to time.

55. On behalf of the State of Maharashtra Mr. Dholakia submitted that the first issue is whether Entry 8 in List II of the Seventh Schedule of the Constitution, covers alcohol unfit for human consumption. The second issue, according to him, is, whether assuming that the entry does not include alcohol unfit for human consumption, its scope in that respect is curtailed because of item 26 of the Schedule to the IDR Act, 1951. The third issue, according to him, is, whether having regard to Entry 51 in List II, the State can (a) impose regulations by creating economic disincentives for consumption of drinkable alcohol, and (b) prevention of misuse of non-drinkable alcohol for consumption.

56. On behalf of the State both Mr. Trivedi and Mr. Yogeshwar Prasad contended that regulatory power of the State was there and in order to regulate it was possible to impose certain disincentives in the form of fees or levies. Imposition of these imposts as part of regulatory process is

permissible, it was submitted. Our attention was drawn to the various decisions where by virtue of "police power" in respect of alcohol the State has imposed such impositions. Though one would not be justified in adverting to any police power, it is possible to conceive sovereign power and on that sovereign power to have the power of regulation to impose such conditions so as to ensure that the regulations are obeyed and complied with. We would not like, however, to embark upon any theory of police power because the Indian Constitution does not recognise police power as such. But we must recognise the exercise of sovereign power which gives the States sufficient authority to enact any law subject to limitations of the Constitution to discharge its functions. Hence, the Indian Constitution as a sovereign State has power to legislate on all branches except to the limitation as to the division of powers between the Centre and the States and also subject to the fundamental rights guaranteed under the Constitution. The Indian State, between the Centre and the States, has sovereign power. The sovereign power is plenary and inherent in every sovereign State to do all things which promote the health, peace, morals, education and good order of the people. Sovereignty is difficult to define. This power of sovereignty is, however, subject to constitutional limitations. This power, according to some constitutional authorities, is to the public what necessity is to the individual. Right to tax or levy imposts must be in accordance with the provisions of the Constitution.

57. It was contended that the question, necessarily arises as to whether these regulations under the Bombay Prohibition Act, 1949 are intended as measures of revenue or as measures to advance the cause of prohibition. Mr. Dholakia invited us to the phrase "intoxicating liquor" which has been the subject matter of interpretation by the Federal Court, this Court and the United States Supreme Court. It has been held that the expression is of widest import and must be given liberal interpretation. According to him, this Court in *Balsara* case (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361) held that even toilet articles containing alcohol as such would be intoxicating liquors. Mr. Dholakia suggests that United States Supreme Court has expressly held that "Denatured Spirit" is intoxicating liquor because of necessity to prevent its misuse. It was further contended that the IDR Act, was made by the Parliament and it is traceable to Entry 52, List I. This entry enables the Union legislature to legislate in respect of an industry the control of which is declared by Parliament to be expedient in public interest. Entry 52, according to him, speaks of control of an industry in its establishment. Ordinarily, States have the authority to allow or not to allow any industry to be established under Entry 24 of List II. This power is not taken away by the IDR Act. According to Mr. Dholakia, if industry is allowed to be established by law within the policy of the State then its control thereafter would vest with the State. Ordinarily, a citizen has fundamental right to establish an industry and only reasonable restrictions can be placed on these. However, the case of intoxicating liquor is different. By virtue of Article 47 of the Constitution the State may impose absolute prohibition in respect of intoxicating liquor. In such a case, the State is authorised to deny a citizen the right to establish an industry in intoxicating liquor. No person can claim that he is entitled to establish an industry for manufacturing whisky in any particular State. The true test, according to Mr. Dholakia, is to ascertain if there was no IDR Act to which entry of the State List, various regulations in respect of "alcohol industry" would be traced. It was submitted that the regulations would have to be traced to Entry 24 of List II and not to Entry 8. It was submitted that in case of alcohol ordinarily used for human consumption, the extent of regulation may go to the extent of complete prohibition. It may go to a lesser extent of partial prohibition. It may assume a variety of including one of imposing economic disincentives. If the price of drinkable alcohol becomes higher and higher, the person given to drinking might think it better to give it up, according to Mr. Dholakia. The fixation is a valid method in regulation of consumption, and if the above analysis is fully valid for drinkable alcohol, it is equally valid for the non-drinkable alcohol

for the following reasons, according to Mr. Dholakia : the major difference in non-drinkable alcohol and drinkable one is that the former is often the legitimate activity while in the latter no such claim can be made. The distinction is important for the purpose of determining the extent of regulations but it is of no assistance for deciding the nature of the regulation. It is true, he says, that a State may not be entitled to prohibit the business of non-drinkable alcohol but the State can impose regulation by which it can make non-drinkable alcohol more expensive to ensure that it is not available cheaply to a would be bootlegger. Mr. Dholakia invites us to hold that denatured spirit is made by addition of malodorous or noxious substance to alcohol in order to make it unfit for human consumption. Denaturing is not done for making such alcohol fit for machine; it is done for the purpose of ensuring that such alcohol is avoided by would-be drinkers. Even so, lacking the easy availability of drinkable alcohol, those given to drinking would make an attempt to drink denatured spirit after distillation. Such process of distillation is what the bootleggers undertake. The process is a simple one, according to Mr. Dholakia. We need not detain ourselves in examining the process as suggested by him.

58. He insisted that the dividing line between relative importance of prohibition and industry should be left to each individual State because the conditions in all States are not identical. He suggested that Gujarat attaches great importance to the cause of prohibition. There are historical and social factors responsible for this policy. According to Mr. Dholakia, the government of that State is prepared to sacrifice revenue running into hundreds of crores of rupees but the same may not be true of a State like Punjab. According to him, the historical and social conditions there are quite different. The power of the State Government with regard to potable liquor was sustained in the dissenting judgment of Justice Hidayatullah in the case of *Guruswamy & Co. v. State of Mysore* (AIR 1967 SC 1512 : (1967) 1 SCR 548). It was, however, suggested that levies in the instant case are not duties of excise as understood in the said decision. For these reasons, Mr. Dholakia submitted that the Bombay Prohibition Act cannot be challenged. According to him, the relevant section of the said Act and the Denatured Spirit Rules, 1959 have to impose and advance the cause of prohibition while at the same time assuring a reasonable availability denatured spirit and rectified spirit at reasonable prices.

59. Learned Advocate-General of the State of Andhra Pradesh has also submitted in support of the imposition made under the A.P. Excise Act. He has referred us to the relevant definitions and sections contending that the Act falls within the legislative competence of the Andhra Pradesh State legislature by virtue of entries 8 and 51 of List II and Entry 33 of List III of the Seventh Schedule. He contended that the levy of excise duty falls within Entry 51 of List II of the Seventh Schedule to the Constitution inasmuch as the Andhra Pradesh Act received the assent of the President and is a later enactment than the IDR Act. The provisions of the Andhra Pradesh Act, according to him, will prevail over any earlier central law under Article 254 of the Constitution. The said central legislation is enacted under Entry 52 of List I. Learned Advocate-General also insisted that there is no fundamental right in the business of liquor; and that rectified spirit is nothing but alcohol which can be diluted and rendered fit for human consumption by additions of certain substances. It can also be utilised for industrial purposes as raw material for manufacturing other products. This multifarious user does not bring about any change in the essential character of alcohol after distillation. In respect of these legislations, learned Advocate-General submitted that even if such an assumption were to be regarded as conceivable, State legislation has the predominant effect prevailing over the central legislature in respect of the State of A.P. in view of the assent by the President and the enactment being later in point of time in accordance with Article 254 of the Constitution of India.

60. It was submitted that the dichotomy attempted to be drawn in Entry 84 of List I of the Seventh Schedule to the Constitution, on the basis of the development of the concept of industrial alcohol and the inapplicability of the concept of potable liquor to the industry of alcohol is not valid. There is no question of fundamental right to trade in dangerous or hazardous alcohol. It was submitted that it is consistent with wider interpretation of alcoholic liquor based on pre-existing legislative history. It was further submitted that the test of portability of liquor is in no way rendered invalid in relation to industrial alcohol as it still permits of conversion to potability by addition of flavours and dilution. When two interpretations are possible, it was submitted that the choice must fall on that interpretation which validates existing State legislations designed to raise revenues and rejection of the other interpretation which is destructive of the scheme of distribution of powers. According to him, the words 'alcoholic liquor' in Lists I and II of the Seventh Schedule to the Constitution must be interpreted so as to mean and take within its sweep alcohol as first obtained in the process of or as a product of fermentation industry. At this stage, it is capable of being rendered potable. The fact that it may be rendered unfit for human consumption, does not render the substance any less liable for taxation.

61. Learned Advocate-Generals for the States of Gujarat and Kerala have also made their submissions, and referred to several decisions and the concept of police power, and contended that imposition of a fee would be the most effective method of regulating intoxicating liquor other than alcohol. According to the Advocate-General of Kerala, that would be justified as the reasonable measure in regard to intoxicating liquor. According to him, it has been accepted by courts all along that the 'police power' of the State enables regulations to be made regarding manufacture, transport, possession and sale of intoxicating liquor. Such police power could be exercised as to impose reasonable restrictions as to effectuate the power. He referred to the observations of this Court in *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer* ((1890) 34 L ed 620 : 137 US 86) which quoted the passage from *Crowley v. Christensen* ((1890) 34 L ed 620 : 137 US 86). Reference was also made to *Har Shankar* case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121) where this Court quoted volume 38 of the American Jurisprudence where it was stated that the higher the fee is imposed for a licence, better is the regulation. Reliance was also placed on *P. N. Kaushal* case ((1978) 3 SCC 558 : (1979) 1 SCR 122 : AIR 1978 SC 1457). It was contended that it has been accepted by this Court that the police power is exercisable for regulation of an activity of a legislature within the permissible field or impost as regulatory measure. It may be valid though it may neither be fee nor a tax in the limited sense of the term. See the observations of this Court in *Southern Pharmaceuticals & Chemicals, Trichur v. State of Kerala* ((1981) 4 SCC 391 : 1981 SCC (Tax) 320 : (1982) 1 SCR 519, 537 : AIR 1981 SC 1863 : 1981 Tax LR 2838). Regarding regulatory measures in connection with medicinal preparations containing alcohol it was observed by this Court that the impugned provisions had to be enacted to ensure that the rectified spirit is not misused under the pretext of being used for toilet and medicinal preparations containing alcohol. Such a regulation is a necessary concomitant of the police power of the State to regulate such trade or business which is inherently dangerous to public health. The American doctrine of police power is not perhaps applicable as such in India, but powers of the sovereignty to regulate as part of the power of the competent legislature to effectuate its aim are there.

62. It is true that in *State of West Bengal v. Subodh Gopal Bose* (AIR 1954 SC 92 : 1954 SCR 587, 601-04) and *Kameshwar Prasad v. State of Bihar* (AIR 1962 SC 1166 : 1962 Supp 3 SCR 369 : (1962) 1 LLJ 224 : 22 FJR 50) the concept of police power was accepted as such, but this doctrine was not accepted in India as an independent power but was recognised as part of the power of the State to legislate with respect to the matters enumerated in the State and Concurrent Lists, subject to constitutional limitations. It was stated that the American jurisprudence of police power as

distinguished from specific legislative power is not recognised in our Constitution and is, therefore, contrary to the scheme of the Constitution. In interpreting the provision of our Constitution, we should go by the plain words used by the Constitution-makers and the importing of expression like 'police power', which is a term of variable and indefinite connotation, can only make the task of interpretation more difficult. It was contended that in enacting a law with respect to intoxicating liquor as part of the legislative power measures of social control and regulation of private rights are permissible and as such may even amount to prohibition.

63. We are of the opinion that we need not detain ourselves on the question whether the States have police power or not. We must accept the position that the States have the power to regulate the use of alcohol and that power must include power to make provisions to prevent and/or check industrial alcohol being used as intoxicating or drinkable alcohol. The question is whether in the garb of regulations a legislation which is in pith and substance, as we look upon the instant legislation, fee or levy which has no connection with the cost or expenses administering the regulation, can be imposed purely as regulatory measure. Judged by the pith and substance of the impugned legislation, we are definitely of the opinion that these levies cannot be treated as part of regulatory measures. In this view of the matter we do not detain ourselves with examining the numerous American decisions to which our attention was drawn by learned counsel very elaborately and thoroughly.

64. We recognise power of the State to regulate though perhaps not as emanation of police power, but as an expression of the sovereign power of the State. But that power has its limitations. We have noted the submissions made to this effect by the learned Advocate-Generals of different States, including the State of Gujarat. Some of the intervenors have also made the submissions. We have considered the submissions made by M/s. Kantilal & Co. as intervenors in respect of the constitutional validity of the Bombay Prohibition Act as amended by the Bombay Prohibition (Gujarat Amendment) Act, 1978. We have also the advantage of the submissions made on behalf of Advocate-General of Madhya Pradesh by Mr. R. B. Datar. He submitted that the substance of the case put forward by the petitioners and/or appellants, is that the vend fee in respect of industrial alcohol is not a fee for any services rendered, it is a compulsory exaction of money. The answer to the question posed lies not in the labels used, according to Mr. Datar for describing the commodity in question. It lies in the examination of the chemical reality of the substance. He says that no process of interpretation can alter the law of chemistry or the chemical structure of the substance described in common parlance as industrial alcohol or potable alcohol, or alcohol for human consumption. He referred us to organic chemistry and other books but, as mentioned before, the meanings must be found out in the conditions as these are.

65. On behalf of State of U.P., Mr. Trivedi, learned Additional Advocate-General further submitted that Entry 52 of List I is an exceptional entry. It not only prescribes the field of legislation but also enables and empowers the Parliament to make laws to the exclusion of the State. According to him, being exclusionary in nature unlike entries merely delineating fields of legislation, Entry 52 has to be strictly and, therefore, narrowly construed. The other question that has to be judged, according to him, is that whenever the Constitution intended the Parliament to assume legislative competence in respect of the entire field, a declaration of an unqualified nature is provided for, unlike a qualified provision like Entry 52 of List I. The words 'control' and 'regulation' are at times, held to be interchangeable or used synonymously, their use in the various entries either singly or jointly, indicates that they are sought to convey a different sense. The word 'control' has in the context, a narrower meaning, excluding details of regulatory nature by the State. According to him, comparing entries 7, 23, 24, 27, 62, 64 and 67 of List I with Entry 52, would demonstrate that under Entry 52 it

is not the entire field which is sought to be covered but only the control of industries; and that the absence of inclusion of qualifying words like 'the control of which' cannot be brushed aside. By referring to the several decisions, he contended that in view of the declarations made in Section 2 of the IDR Act and the provision made therein the entire field was not occupied and the vend fee or other impost by the State legislatures were not infringing in the field treated by the central legislature.

66. Before we deal with the contentions of the petitioners/appellants, it is necessary to reiterate the principles by which these questions will have to be judged.

67. It is well to remember that the meaning of the expressions used in the Constitution must be found from the language used. We should interpret the words of the Constitution on the same principle of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. A Constitution is the mechanism under which laws are to be made and not merely an Act which declares what the law is to be. It is also well settled that a Constitution must not be construed in any narrow or pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power, must be adopted. An exclusionary clause in any of the entries should be strictly and, therefore, narrowly construed. No entry should, however, be so read as not (sic) to rob it of entire content. A broad and liberal spirit should, therefore, inspire those whose duty it is to interpret the Constitution, and the courts are not free to stretch or to pervert the language of an enactment in the interest of any legal or constitutional theory. Constitutional adjudication is not strengthened by such an attempt but must seek to declare the law but it must not try to give meaning on the theory of what the law should be, but it must so look upon a Constitution that it is a living and organic thing and must adapt itself to the changing situations and pattern in which it has to be interpreted. It has also to be borne in mind that where division of powers and jurisdiction in a federal Constitution is the scheme, it is desirable to read the Constitution in harmonious way. It is also necessary that in deciding whether any particular enactment is within the purview of one legislature or the other, it is the pith and substance of the legislation in question that has to be looked into. It is well settled that the various entries in the three lists of the Indian Constitution are not powers but fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution. The three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which the appropriate legislatures can operate. It is well settled that widest amplitude should be given to the language of the entries in three Lists but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then only comes the duty of the court to find the true intent and purpose and to examine the particular legislation in question. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other in the same list. It has to be interpreted as the Constitution must be interpreted as an organic document in the light of the experience gathered. In the constitutional scheme of division of powers under the legislative lists, there are separate entries pertaining to taxation and other laws. The aforesaid principles are fairly well settled by various decisions of this Court and other courts. Some of these decisions have been referred to in the decision of this Court in Civil Appeal No. 62 (N)/70 - India Cement Ltd. v. State of Tamil Nadu ((1990) 1 SCC 12).

68. The Balsara case (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361) was in the context of the business of potable alcohol. Problems arose with regard to auctions, vends, licences and the business

of manufacturing, selling, etc. of potable alcohol. Until the case of Synthetics & Chemicals ((1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614), which is under challenge here, all other cases since then have dealt with potable alcohol. The only case which has dealt with alcohol used for industrial purposes was the case of Indian Mica and Micanite Industries Ltd. v. State of Bihar ((1971) 2 SCC 236 : 1971 Supp SCR 319 : AIR 1971 SC 1182). The Constitution of India, it has to be borne in mind, like most other Constitutions, is an organic document. It should be interpreted in the light of the experience. It has to be flexible and dynamic so that it adapts itself to the changing conditions and accommodates itself in a pragmatic way to the goals of national development and the industrialisation of the country. This Court should, therefore, endeavor to interpret the entries and the powers in the Constitution in such a way that it helps to the attainment of undisputed national goals, as permitted by the Constitution. As mentioned hereinbefore, the relevant entries in the Seventh Schedule to the Constitution demarcate legislative fields and are closely linked and supplement one another. In this connection, reference may be made to Entry 84 of List I which deals with the duties of excise on tobacco and other goods manufactured or produced in India except, inter alia, alcoholic liquors for human consumption. Similarly, Entry 51 of List II is the counterpart of Entry 84 of List I so far as the State list is concerned. It authorises the State to impose duties of excise on alcoholic liquors for human consumption and opium, etc. manufactured or produced in the State and the countervailing duties at the same or lower rates on similar goods produced or manufactured elsewhere in India. It is clear that all duties of excise save and except the items specifically excepted in Entry 84 of List I are generally within the taxing power of the central legislature. The State legislature has power, though limited it is, in imposing duties of excise. That power is circumscribed under Entry 51 of List II of the Seventh Schedule to the Constitution. As we have noted hereinbefore, the correct principles of harmonious interpretation of legislative entries have been laid down in several cases. We have mentioned hereinbefore some of the decisions as noted in the decision of this Court in India Cement ((1990) 1 SCC 12). In M. P. V. Sundararamier & Co. v. State of A. P. (AIR 1958 SC 468 : 1958 SCR 1422, 1480-82 : (1958) 9 STC 298) this Court has laid down that -

- (i) Legislative entries are to be liberally construed. But when a topic is governed by two entries, then they have to be reconciled. It cannot be that one entry is to be liberally construed and the other entry is not to be liberally construed.
- (ii) Under the constitutional scheme of division of powers under legislative lists, there are separate entries pertaining to taxation and other laws. A tax cannot be levied under a general entry.
- (iii) A Constitution is an organic document and has to be so treated and construed.
- (iv) If there is a conflict between the entries, the first principle is to reconcile them. But the Union power will prevail by virtue of Article 246(1) and (3). The words "notwithstanding" and "subject to" are important and give primacy to the central legislative power.

69. In the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (1939 FCR 18, 37-38 : AIR 1939 FC 1) the Federal Court had emphasised that Constitution of a government is a living and organic thing which of all instruments has the greatest claim to be so construed as to make it live. In Indian Mica and Micanite Industries Ltd. v. State of Bihar ((1971) 2 SCC 236 : 1971 Supp SCR 319 : AIR 1971 SC 1182), a bench of five Hon'ble judges stated as under : (SCC p. 238, para 3)

"Under the 1935 Act as under our present Constitution, the power to levy duties on alcoholic liquor fit for human consumption was allocated to the provincial legislature whereas the power to levy duty on alcoholic liquor not fit for human consumption was allocated to the central legislature."

70. In the aforesaid case, an impost was sought to be placed on denatured spirit which was used in the manufacture of micanite. It was held that the impost could not be justified as a tax, under the taxing power and, therefore, an enquiry was ordered to find out whether it was justified as a fee.

71. In *Adhyaksha Mathur Babu's Sakti Oushadhalaya Dacca (P) Ltd. v. Union of India* (AIR 1963 SC 622 : (1963) 3 SCR 957) at pages 966, 969, 975, 976 of the report, it was observed by this Court that only the Central Government has the power to tax liquids containing liquor which was an ayurvedic medicine even though such medicines were capable of being used as intoxicating things. In *Guruswamy & Co. v. State of Mysore* (AIR 1967 SC 1512 : (1967) 1 SCR 548) at pages 549, 556, 557, 564, 565, 571, 572 of the report, it was held that it is clear that imposts which were not in the nature of excise duty were held to be ultra vires Entry 51 of List II of the Seventh Schedule to the Constitution. In *State of Mysore v. D. Cawasji & Co.* ((1970) 2 SCC 710 : (1971) 2 SCR 799 : AIR 1971 SC 152) at pages 804, 805 and 806 of the report (SCC pp. 713-15), this Court rejected the contention that under Entry 8 of List II of the Seventh Schedule to the Constitution the State was competent to legislate for levy of cess in respect of "intoxicating liquor" that is to say, the production, manufacture, transport, purchase and sale of intoxicating liquors. Legislative power normally includes all incidental and subsidiary powers, but the power to tax is neither incidental nor subsidiary to the power to legislate on a matter or topic. Reference was made to *M. P. V. Sundararamier case* (AIR 1958 SC 468 : 1958 SCR 1422, 1480-82 : (1958) 9 STC 298). Entries in Lists I and II, dealing with certain specific topics, it was held, do not grant power to levy tax on transactions relating to those topics. Power to tax must be derived from a specific taxing entry. Tax could not, therefore, be levied, it was held on intoxicating liquors relying upon Entry 8 of List II of the Seventh Schedule. It was further held that the taxing power in respect of alcoholic liquors for human consumption is, therefore, circumscribed and it might only be levied as excise duty, that is a duty levied on the production and manufacture of alcoholic liquors. Reliance was placed on *R. C. Jall v. Union of India* (1962 Supp 3 SCR 436 : AIR 1962 SC 1281).

72. In *Om Prakash Agarwal v. Giriraj Kishore* ((1986) 1 SCC 722 : (1986) 1 SCR 149) at pages 158 and 163 of the report (SCC pp. 728 and 732), Venkataramiah J., as the learned Chief Justice then was, held that no tax can be levied in the guise of a fee. It was held at p. 158 of the report as follows : (SCC p. 728, para 7)

"As observed in *M. P. V. Sundararamier & Co. v. State of Andhra Pradesh* (AIR 1958 SC 468 : 1958 SCR 1422, 1480-82 : (1958) 9 STC 298), in List II of the Seventh Schedule to the Constitution entries 1 to 44 form one group mentioning the subjects on which the States can legislate and entries 45 to 63 in that list form another group dealing with taxes that may be levied by States. Entry 64 refers to offences against laws with respect to any of the matters in List II and Entry 65 refers to jurisdiction of courts. Entry 66 empowers the State to levy fees in respect of any of the matters in List II. Unless the cess in question can be brought under any of the entries from 45 to 63 it cannot be levied as a tax at all."

73. It was further observed at p. 163 of the report as follows : (SCC p. 732, para 12)

"It is constitutionally impermissible for any State Government to collect any amount which is not strictly of the nature of a fee in the guise of a fee. If in the guise of a fee the legislation imposes a tax it is for the court on scrutiny of the scheme of the levy to determine its real character. If on a true analysis of the provisions levying the amount, the court comes to the conclusion that it is, in fact, in the nature of a tax and not a fee, its validity can be justified only by bringing it under any one of the entries in List II of the Seventh Schedule to the Constitution under which the State can levy a tax."

74. It has to be borne in mind that by common standards ethyl alcohol (which has 95 per cent) is an industrial alcohol and is not fit for human consumption. The petitioners and the appellants were manufacturing ethyl alcohol (95 per cent) (also known as rectified spirit) which is an industrial alcohol. ISI specification has divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverage and industrial alcohols are clearly and differently treated. Rectified spirit for industrial purposes is defined as "spirit purified by distillation having a strength not less than 95 per cent of volume by ethyl alcohol". Dictionaries and technical books would show that rectified spirit (95 per cent) is an industrial alcohol and is not potable as such. It appears, therefore, that industrial alcohol which is ethyl alcohol (95 per cent) by itself is not only non potable but is highly toxic. The range of spirits of potable alcohol is from country spirit to whisky and the ethyl alcohol content varies between 19 to about 43 per cent. These standards are according to the ISI specifications. In other words, ethyl alcohol (95 per cent) is not alcoholic liquor for human consumption but can be used as raw material input after processing and substantial dilution in the production of whisky, gin, country liquor, etc. In many decisions, it was held that rectified spirit is not alcohol fit for human consumption. Reference may be made in this connection to *Delhi Cloth and General Mills Co. Ltd. v. Excise Commissioner, U.P. Allahabad* (Special Appeal No. 177 of 1970, decided on March 29, 1973). In this connection, it is important to bear in mind the actual provision of Entry 8 of List II. Entry 8 of List II cannot support a tax. The above entry contains the words "intoxicating liquor". The meaning of the expression "intoxicating liquor" has been rightly interpreted by the Bombay High Court in the *Balsara* case. The decision of the Bombay High Court is reported in *Nusserwanji Balsara v. State of Bombay* (AIR 1951 Bom 210, 214 : 52 Bom LR 799 : 52 Cr LJ 80 : ILR (1951) Bom 17). In that light, perhaps, the observations of Fazl Ali, J. in *Balsara* case (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361) requires consideration. It appears that in the light of the new experience and development, it is necessary to state that "intoxicating liquor" must mean liquor which is consumable by human being as it is and as such when the word "liquor" was used by Fazl Ali, J., they did not have the awareness of full use of alcohol as industrial alcohol. It is true that alcohol was used for industrial purposes then also, but the full potentiality of that user was not then comprehended or understood. With the passage of time, meanings do not change but new experiences give new colour to the meaning. In *Har Shankar* case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121), a bench of five judges have surveyed the previous authorities. That case dealt with the auction of the right to sell potable liquor. The position laid down in that case was that the State had the exclusive privilege or right of manufacturing and selling liquor and it had the power to hold public auctions for granting the right or privilege to sell liquor and that traditionally intoxicating liquors were the subject matters of State monopoly and that there was no fundamental right in a citizen to carry on trade or business in liquor. All the authorities from *Cooverji Barucha* case (1954 SCR 873 : AIR 1954 SC 220) to *Har Shankar* case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121) dealt with the problems or disputes arising in connection with the sale, auction, licensing or use of potable liquor.

75. Only in two cases the question of industrial alcohol had come up for consideration before this

Court. One is the present decision which is under challenge and the other is the decision in *Indian Mica and Micanite Industries Ltd. case* ((1971) 2 SCC 236 : 1971 Supp SCR 319 : AIR 1971 SC 1182). In the latter case, in spite of the earlier judgments including *Barucha case* (1954 SCR 873 : AIR 1954 SC 220), denatured spirit required for the manufacture of micanite was not regarded as being within the exclusive privilege of the State. It appears that in that decision at p. 321 of the report (SCC p. 238), it was specifically held that the power of taxation with regard to alcoholic liquor not fit for human consumption, was within the legislative competence of central legislature. The impost by the State was held to be justifiable only if it was a fee thereby impliedly and clearly denying any consideration or price for any privilege. For the first time, in the *Synthetics & Chemicals Ltd. case* ((1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614) the concept of exclusive privilege was introduced into the area of industrial alcohol not fit for human consumption.

76. *Balsara case* (1951 SCR 682 : AIR 1951 SC 318 : 2 Cri LJ 1361) dealt with the question of reasonable restriction on medicinal and toilet preparations. In fact, it can safely be said that it impliedly and sub-silently clearly held that medicinal and toilet preparations would not fall within the exclusive privilege of the States. If they did there was no question of striking down of Section 12(c) and (d) and Section 13(b) of the Bombay Prohibition Act, 1949 as unreasonable under Article 19(1)(f) of the Constitution because total prohibition of the same would be permissible. In *K. K. Narula case* (*K. K. Narula v. State of J & K*, (1967) 3 SCR 50 : AIR 1967 SC 1368) it was held that there was right to do business even in potable liquor. It was not necessary to say whether it is good law or not. But this must be held that the reasoning therein would apply with greater force to industrial alcohol.

77. Article 47 of the Constitution imposes upon the State the duty to endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and products which are injurious to health. If the meaning of the expression "intoxicating liquor" is taken in the wide sense adopted in *Balsara case* (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361), it would lead to an anomalous result. Does Article 47 oblige the State to prohibit even such industries as are licensed under the IDR Act but which manufacture industrial alcohol ? This was never intended by the above judgments or the Constitution. It appears to us that the decision in the *Synthetics & Chemicals Ltd. case* ((1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614) was not correct on this aspect.

78. Reference in this connection may be made to the decision in *Ostime (Inspector of Taxes) v. Australian Mutual Provident Society* ((1959) 3 All ER 245 : 1960 AC 459) at p. 256 of the report, Lord Denning in his dissenting judgment observed as follows :

"My Lords, I ask myself : What authority is to be given in these circumstances to the decision of this House in 1947 ? Is it to be followed from step to step regardless of consequences ? Are we to hold that the tax under Rule 3 is a tax on the profits of the business for all purposes, including the purposes of the Double Taxation Agreement, which this House never had in mind at all ? I think not. The doctrine of precedent does not compel your Lordships to follow the wrong path until you fall over the edge of the cliff. As soon as you find that you are going in the wrong direction, you must at least be permitted to strike off in the right direction, even if you are not allowed to retrace your steps. And that is what I would ask your Lordships to do. I would invite your Lordships to say that the decision of this House in 1947 has no application to the meaning of the word "profits" in the Double Taxation Agreement".

79. Justice Jackson in his dissent in the case of Commonwealth of Massachusetts et al v. USA (92 L ed 968) also upheld the right to set right what was said wrongly in the past.

80. It was submitted that the activity in potable liquor which was regarded safe and exclusive right of the State in the earlier judgments dealing with the potable liquor were sought to be justifiable under the police power of the State, that is, the power to preserve public health, morals, etc. This reasoning can never apply to industrial alcohol manufactured by industries which are to be developed in the public interest and which are being encouraged by the State. In a situation of this nature, it is essential to strike a balance and in striking the balance, it is difficult to find any justification for any theory of any exclusive right of a State to deal with industrial alcohol. Restriction valid under one circumstance may become invalid in changing circumstances. Reference may be made to the observations of Justice Brandeis in *Nashville, Chattanooga & St. Louis Railway v. Herbert S. Walters* (79 L ed 949 : 294 US 405 (1935)). See also *Nebbia v. People of the State of New York* (78 L ed 940, 941 : 291 US 502). Similar is the effect of the approach of this Court in *Motor General Traders v. State of Andhra Pradesh* ((1984) 1 SCC 222 : (1984) 1 SCR 594 : AIR 1984 SC 121).

81. It is not necessary for us here to say anything on the imposts on potable alcohol as commonly understood. These are justified by the lists of our legislature practised in this country - see the observations of Hidayatullah, J., as the Chief Justice then was, in *Guruswamy v. State of Mysore* (at pp. 573-574) and other decisions mentioned hereinbefore.

82. In that view of the matter, it appears to us that the relevant provisions of the U.P. Act, A.P. Act, Tamil Nadu Act, Bombay Prohibition Act, as mentioned hereinbefore, are unconstitutional insofar as these purport to levy a tax or charge imposts upon industrial alcohol, namely alcohol used and usable for industrial purposes.

83. Having regard to the principles of interpretation and the constitutional provisions, in the light of the language used and having considered the impost and the composition of industrial alcohol, and the legislative practice of this country, we are of the opinion that the impost in question cannot be justified as State imposts as these have been done. We have examined the different provisions. These are not merely regulatory. These are much more than that. These seek to levy imposition in their pith and substance not as incidental or as merely disincentives but as attempts to raise revenue for States' purposes. There is no taxing provision permitting these in the lists in the field of industrial alcohol for the State to legislate.

84. Furthermore, in view of the occupation of the field by the IDR Act, it was not possible to levy this impost.

85. After the 1956 amendment to the IDR Act bringing alcohol industries (under fermentation industries) as Item 26 of the First Schedule to IDR Act the control of this industry has vested exclusively in the Union. Thereafter, licences to manufacture both potable and non-potable alcohol is vested in the Central Government. Distilleries are manufacturing alcohol under the central licences under IDR Act. No privilege for manufacture even if one existed, has been transferred to the distilleries by the State. The State cannot itself manufacture industrial alcohol without the permission of the Central Government. The States cannot claim to pass a right which they do not possess. Nor can the States claim exclusive right to produce and manufacture industrial alcohol which are manufactured under the grant of licence from the Central Government. Industrial alcohol cannot upon coming into existence under such grant be amenable to States' claim of exclusive

possession of privilege. The State can neither rely on Entry 8 of List II nor Entry 33 of List III as a basis for such a claim. The State cannot claim that under Entry 33 of List III, it can regulate industrial alcohol as a product of the Scheduled industry, because the Union, under Section 18-G of the IDR Act, has evinced clear intention to occupy the whole field. Even otherwise sections like Sections 24-A and 24-B of the U.P. Act do not constitute any regulation in respect of the industrial alcohol as product of the scheduled industry. On the contrary, these purport to deal with the so-called transfer of privilege regarding manufacturing and sale. This power, admittedly, has been exercised by the State purporting to act under Entry 8 of List II and not under Entry 33 of List III.

86. The position with regard to the control of alcohol industry has undergone material and significant change after the amendment of 1956 to the IDR Act. After the amendment, the State is left with only the following powers to legislate in respect of alcohol :

- (a) It may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers.
- (b) It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol.
- (c) The State may charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol.
- (d) However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo. See in this connection, the observations of Indian Mica case ((1971) 2 SCC 236 : 1971 Supp SCR 319 : AIR 1971 SC 1182).

87. On an analysis of the various Abkari Acts and Excise Acts, it appears that various provinces/Statereserve to themselves in their respective States the right to transfer exclusive or other privileges only in respect of manufacture and sale of alcohol and not in respect of possession and use. Not all but some of the States have provided such reservation in their favour. The price charged as a consideration for the grant of exclusive and other privileges was generally regarded as an excise duty. In other words, excise duty and price for privileges were regarded as one and the same thing. So-called privilege was reserved by the State mostly in respect of country liquor and not foreign liquor which included denatured spirit.

88. On an analysis of the aforesaid decisions and practice, we are clearly of the opinion that in respect of industrial alcohol the States are not authorised to impose the impost they have purported to do. In that view of the matter, the contentions of the petitioners must succeed and such impositions and imposts must go as being invalid in law so far as industrial alcohol is concerned. We make it clear that this will not affect any impost so far as potable alcohol as commonly understood is concerned. It will also not affect any imposition of levy on industrial alcohol fee where there are circumstances to establish that there was quid pro quo for the fee sought to be imposed. This will not affect any regulating measure as such.

89. We must, however, observe, that these imposts and levies have been imposed by virtue of the decision of this Court in Synthetics & Chemicals Ltd. case ((1980) 2 SCC 441 : (1980) 2 SCR 531 :

AIR 1980 SC 614). The States as well as the petitioners and manufacturers have adjusted their rights and their position on that basis except in the case of State of Tamil Nadu. In that view of the matter, it would be necessary to state that these provisions are declared to be illegal prospectively. In other words, the respondent States are restrained from enforcing the said levy any further but the respondents will not be liable for any refund and the tax already collected and paid will not be refunded. We prospectively declare these imposts to be illegal and invalid, but do not affect any realisations already made. The writ petitions and the appeals are disposed of accordingly. The review petitions, accordingly, succeed though strictly no grounds as such have been made out but in the view we have taken, the decision in the Synthetics & Chemicals Ltd. case ((1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614) cannot be upheld. In the view we have taken also, it is not necessary to decide or to adjudicate if the levy is valid as to who would be liable, that is to say, the manufacturer or the producer or the dealer.

90. With regard to Writ Petition No. 4051 of 1978 (Chemicals & Plastics India Ltd. v. State of Tamil Nadu), certain orders were passed by this Court on November, 1978, September 1, 1986, October 1, 1986 and October 10, 1986. It is stated that the present demand of the Central Excise Department from March 1, 1986 on alcohol manufactured by the company in their captive distillery is over Rs. 4 crores. This Court by its order dated October 1, 1986 as confirmed on October 16, 1986 had permitted the State Government to collect the levy on alcohol manufactured in company's captive distillery subject to adjustment of equities and restrained the central excise authorities from collecting any excise duty on such alcohol. It is, therefore, necessary to declare that in future no further realisation will be made in respect of this by the State Government from the petitioners. So far as the past realisations made are concerned, we direct that this application for that part of the direction, should in accordance with our decision herein be placed before a Division Bench for disposal upon notice both to the State Government and the Central Government.

91. In the facts and the circumstances of the case, the parties will bear and pay their own costs.

OZA, J. (concurring) ♦

While I agree with my learned brother Hon'ble Mukharji, J. as regards the conclusions but I would like to add the following reasons.

93. In these matters the main question that arise for consideration is about the validity of the levies made by the respondent States on alcohol which is utilised by the industries for manufacturing the products where alcohol is the raw material. Some of these industries themselves manufacture alcohol as they have their own distilleries and from their distilleries through pipelines it goes to their industrial units where this is used as a raw material whereas some are industries which purchase alcohol or denatured spirit on being allotted by the Government. It is alleged that in addition to excise duty levied by the Central Government, excise duty and various levies in various names like vend fee, transport fee and others numbering about eight levies are imposed by the State Government. The main contention on behalf of the industries is that the State legislature has no authority in view of Entry 84 of List I read with Entry 51 of List II to impose such levies, this being alcohol which does not fall within the ambit of "Alcoholic liquors for human consumption". It is only the Centre which has the authority under Entry 84 of List I to tax. Entry 51 of List II Authorises the State legislature to impose a tax on "Alcoholic liquors for human consumption".

94. It is further contended that Entry 8 in List II which talks of intoxicating liquors only authorises the State legislature to enact laws to regulate but does not empower the State legislature to impose

any levy and the various levies which have been imposed by the State legislature on industrial alcohol and even methylated spirit could not be brought within the ambit of regulatory duties for purposes of regulation only and therefore could not be justified under Entry 8 of List II.

95. It was also contended that the State ultimately falls back on the consideration for parting with the privilege to sell alcoholic liquors which has been the basis of series of decisions of this Court based on English and American decisions but according to the learned counsel for the petitioners this doctrine of privilege and consideration for sale of privilege also could be available to the State only in respect of alcohol or alcoholic liquors which are for human consumption. According to the learned counsel by merely widening the definition of intoxicating liquors in respective excise laws enacted by the State the ambit of authority of taxation could not be enlarged by the State legislature when in List II Entry 51 the words used are alcoholic liquors for human consumption. Entry 84 in List I reads :

"84. Duties of excise on tobacco and other goods manufactured or produced in India except -

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry".

96. Entry 51 in List II reads :

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

97. A comparison of the language of these two entries clearly demonstrates that the powers of taxation on alcoholic liquors have been based on the way in which they are used as admittedly alcoholic liquor is a very wide term and may include variety of types of alcoholic liquors but our Constitution-makers distributed them into two heads :

(a) for human consumption

(b) other than for human consumption

Alcoholic liquors which are for human consumption were put in Entry 51 List II authorising the State legislature to levy tax on them whereas alcoholic liquors other than for human consumption have been left to the central legislature under Entry 84 for levy of duty of excise. This scheme of these two entries in Lists I and II is clear enough to indicate the line of demarcation for purposes of taxation of alcoholic liquors. What has been excluded in Entry 84 has specifically been put within the authority of the State for purposes of taxation.

98. Entry 8 in List II reads :

"8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors."

This entry talks of intoxicating liquors and further on refers to production, manufacture, possession, transport, purchase and sale of these liquors. It appears that the State has levied some kind of duties in various names at each of these stages used in this entry, that is, production, manufacture, possession, transport, purchase and sale. But from the scheme of entries in the three lists it is clear that taxing entries have been specifically enacted conferring powers of taxation whereas other entries pertain to the authority of the legislature to enact laws for purposes of regulation. If we compare Entry 8 in List II with Entry 51 it is clear that when Entry 51 authorises the State legislature to levy tax and duties on alcoholic liquors falling in Entry 51, Entry 8 confers authority on the State legislature to enact laws for regulation. Similarly are entries in List I. As regards regulation or regulatory fees it was contended that Entry 52 in List I empowers the Parliament to declare the industries which the Union proposes to control in public interest under Industries Development and Regulation Act.

99. Entry 52 List I reads as under :

"52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

100. Such a declaration is made by the Parliament and this industry that is industry based on fermentation and alcohol has been declared to be an industry under that Act and therefore is directly under the control of the Centre and therefore even in respect of regulation the authority of the State legislature in Entry 8 List II could only be subject to the Industries Development and Regulation Act or Rules made by the Centre.

101. Under these circumstances therefore it is clear that the State legislature had no authority to levy duty or tax on alcohol which is not for human consumption as that could only be levied by the Centre.

102. The main emphasis it appears is that this duty on alcohol and alcoholic liquors is a substantial revenue of State and it appears that it was this obsession which was reflected and demonstrated when this concept of consideration for parting with privilege was invented by our courts on the basis of some judgments from United States based on some judgments from England and it is on this basis that all through the States have been justifying their respective levies and duties on alcohol and alcoholic beverages and overcome the test of reasonableness, double taxation and of limitation as it being a consideration for transfer of privilege it could__ be anything and no limits could be placed thereupon. 103. The main edifice of the argument on behalf of the State is that the State has the sole privilege to deal with in alcohol and alcoholic substances. This, according to the arguments, is eqllly applicable to alcohol for human consumption and also for denatured spirit or other categories of alcoholic liquors which though may be described as not for human consumption but are potential substances which easily could be converted as intoxicating liquors fit for human consumption.

104. It is on this basis that the learned counsel appearing for the States and the Advocate-Generals of the States drew our attention to various extracts of the text books on organic chemistry as it was

contended that there are so many types of alcohol known in the organic chemistry of which ethyl alcohol is one which is used as a beverage when diluted up to a particular percentage and also is used for industrial purposes in high concentration or sometimes denatured. The main theme of the argument was that ethyl alcohol which is a product of distillation after fermentation is extracted in various concentrations and can also be extracted in a very high concentration above 90 per cent which generally is termed as rectified spirit. It is not in dispute that this high concentration of ethyl alcohol is a raw material for various industries. Sometimes it is supplied after being mixed by methylated alcohol or being denatured by other processes only to safeguard against its use for conversion into alcoholic beverages for human consumption. As it is well known that when the ethyl alcohol is diluted by water and its percentage is brought to 40 or 45 or below then it becomes fit for human consumption and it was therefore argued that various duties for purposes of regulation are imposed by the State itself to prevent the conversion of rectified spirit or methylated alcohol to be diverted from industrial to potable use.

105. The basis of the privilege doctrine appears to be that alcoholic drinks or intoxicating drinks are expected to be injurious to health and therefore the trade in these commodities is described as obnoxious and therefore a citizen has no fundamental right under Article 19(1)(g) of the Constitution and therefore the trade in alcoholic drinks which is expected to be injurious to health and obnoxious is the privilege of the State alone and the State can part with this privilege on receipt of the consideration. This basis of the privilege doctrine has to be examined in the context of our Constitution especially Article 21 and Article 47.

106. The concept of royal privilege has been derived historically from England as Great Britain continues to be a monarchy with democracy. The Head of the State is the Crown. It was on these bases that what has not been provided for was supposed to be the privilege of the Crown but under Indian Constitution the Head of the State and the three functionaries of the State, the Executive, the Legislature and the Judiciary have their powers defined under the Constitution. There is nothing like privilege vested in any one of the functionaries of the State and in the background of this basic features of our Constitution the doctrine of privilege is difficult to reconcile with if we examine this privilege of trading in commodities injurious to health and dangerous to life in the context of Article 21 and Article 47 of our Constitution.

107. Article 21 of the Constitution reads :

"21. Protection of Life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law."

This article casts a duty on the State to protect the life of every citizen except as is provided under Article 21. If we compare this duty of the State with the Scheme of privilege which means that the State has a privilege to endanger human life (the life of a citizen) such a privilege runs contrary to Article 21. Another significant article of our Constitution is Article 47. It reads as under :

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

This article appears in the chapter of Directive Principles of State Policy. Inclusion of this article in this chapter clearly goes to show that it is the duty of the State to do what has been enacted in Article 47 and in fact this article starts with the phrase "Duty of the State" and the duty is to improve public health and it is further provided that this duty to improve public health will be discharged by the State by endeavouring to about prohibition. It sounds contradictory for a State which is duty bound to protect human life, which is duty bound to improve public health and for that purpose is expected to move towards prohibition claims that it has the privilege of manufacture and sale of alcoholic beverages which are expected to be dangerous to human life and injurious to human health, transferring this privilege of selling this privilege on consideration to earn huge revenue without thinking that this trade in liquor ultimately results in degradation of human life even endangering human life and is nothing but moving contrary to the duty cast under Articles 21 and 47 and ideal of prohibition enshrined in Article 47. In view of Articles 21 and 47 with all respect to the learned Judges who so far accepted the privilege doctrine it is not possible to accept any privilege of the State having the right to trade in goods obnoxious and injurious to health.

108. The other stand of States to justify these levies is based on the doctrine of police powers. The doctrine of police powers enunciated in number of decisions of the American courts and which has been the subject matter of discussion by various authors in texts on jurisprudence as referred to in Indian context under our Constitution does not appear to be applicable. In the Constitution of USA basic factor which must be kept in mind is : that various States after getting independence from their European Masters came together to form a Federal State and therefore what was not conceded to the Federal State that is the residuary powers vested in the State and as it was not conceded to the Federal Government that this residuary power of maintenance of law and order peace so essential for the development in a civilized society was evolved as a doctrine of police powers vested in the State. In India as the Constitution was enacted or was framed after having the experience of various countries in the world, the concept of fundamental rights and rights like life, liberty, procedure established by law and various legislative function which were divided between the States and the Union left no scope for any power except which could be derived from any provision in the constitution coupled with an entry in one of the three lists which would indicate the power vested in either the State or the Centre. Apart from it the scheme of our Constitution is that there are no residuary powers which vest in the State and the Scheme of our Constitution also reveals that in case of any conflicts it is the Centre which prevails and not the State and therefore trying to apply the doctrine of police powers which has been conceived of in the American decisions with the government of a State in the United States and to apply it to a State under Indian Constitution, will only mean to do violence to the scheme of our Constitution. What police powers have been enunciated under the American Constitution clearly will fall within the ambit of Articles 19, 21, 22 and respective entries in the Schedule of the Constitution. In fact, under our Constitution no powers could be conceived for which there is no provision in any one of the entries in the three lists or which could not be justified under any specific article of the Constitution. Thus even this concept of the doctrine of police powers could not be of any help to justify the levies imposed by the State on alcohol or alcoholic liquors.

109. These questions about the privilege and the doctrine of police powers in fact would be material to be considered when the question about the various levies imposed by the State in respect of alcoholic beverages is considered and so far as the present cases are concerned which pertain to only alcoholic liquors which are not for human consumption that is which are meant for industrial use, the only question will be as to whether the State could justify the respective levies under any of the entries in List II. The main theme of the argument on behalf of the States has been that they have imposed levies because the alcohol which is not for human consumption is a commodity which

could be easily converted into alcoholic liquors for human consumption and therefore the levies have been imposed assuming that it is for human consumption or in other orders the contention has been that these levies have been imposed in order to prevent the conversion of alcoholic liquors which are not for human consumption to those which are for human consumption. A contention therefore was suggested that these levies could be justified as regulatory fees although it was frankly conceded that although the revenue earned out of it is substantial and may not be justifiable as fees but have been imposed and it was therefore that the main theme on behalf of the respondents has been based on the doctrine of the privilege of the State to trade in these commodities as that trade is considered to be obnoxious and injurious to public health.

110. In our opinion, therefore so far as the present case is concerned the State in exercise of powers under Entry 8 of List II and by appropriate law regulate and that regulation could be to prevent the conversion of alcoholic liquors for industrial use to one for human consumption and for purpose of regulation, the regulatory fees only could be justified. In fact, the regulation should be the main purpose, the fee or earning out of it has to be incidental and that is why the learned counsel appearing for the State attempted to use this terminology by saying that the purpose is regulation, the earnings are incidental but frankly conceded that in fact the earnings are substantial. In fact in some of the excise laws in the States they have even used terminology relying on the of privilege and parting with privilege but in my opinion it is not necessary for us to go into these questions in greater detail as we are not here concerned with the trade in alcoholic liquors meant for human consumption and therefore in view of clear demarcation of authority under various items in the three lists, Entry 8 List II could not be invoked to justify the levies which have been imposed by the State in respect of alcoholic liquors which are not meant for human consumption.

</html