

ITEM NO.24

COURT NO.1

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No. 27776/2019

[Arising out of impugned final judgment and order dated 12-03-2019 in OJC No. 1212/1995 passed by the High Court of Orissa at Cuttack]

THE STATE OF ODISHA & ORS.

Petitioner(s)

VERSUS

SHAW WALLACE AND CO. LTD. & ANR.

Respondent(s)

WITH

Diary No(s). 46714/2019 (XI-A)

IA No. 5995/2020 - CONDONATION OF DELAY IN FILING, IA No. 6001/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND IA No. 73670/2020 - EXEMPTION FROM FILING O.T.

SLP(C) No. 7968/2020 (XI-A)SLP(C) No. 7959/2021 (XI-A)

IA No. 70251/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 26-03-2025 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. Niranjan Sahu, AOR
Ms. Shivangi Gupta, Adv.
Ms. Mallika Yadav, Adv.

Mr. Prakash Ranjan Nayak, AOR
Mr. Debasis Jena, Adv.

Mr. Subhasish Mohanty, AOR

For Respondent(s) Mr. Deepak Jain, Adv.
Mr. Pradeep K B, Adv.
Mr. Vaibhav Manu Srivastava, AOR

Mr. Sandeep Chilana, Adv.
Mr. Akshat Kumar, AOR
Mr. Priyojeet Chatterjee, Adv.

Mr. Snehil Sharma, Adv.

Mr. Kedar Nath Tripathy, AOR

Mr. Anupam Lal Das, Sr. Adv.

Mr. Shovan Mishra, AOR

Ms. Bipasa Tripathy, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

Delay condoned.

We are in agreement with the conclusions drawn by the High Court. However, we would like to record that Section 57 of the Bihar and Orissa Excise Act, 1915¹, *vide* clauses (b) and (c), requires willful contravention of any Rule made under Section 89 or Section 90 or a willful act in breach of any of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in the said Act.

Willfulness refers to *mens rea* or the mental intent to contravene and not abide by the provisions of the Rule, license, etc., or the provisions of the Act.²

Rule 39A(7)(b) of the Board's Excise Rules, 1965, stipulates that, if any stock of I.M.F.L./Beer stored under Rule 33(c) becomes unfit for human consumption owing to long storage or for other factors, the licensee shall be squarely responsible and shall be liable to pay fine equal to five times the duty payable to the Government on the stock so spoiled. The rule falters and falls foul of Section 57 of the 1915 Act on two grounds. Firstly, it does not require *mens rea* as an essential ingredient to impose penalty.

¹ For short, "1915 Act."

² See *Dr. U.N. Bora, Ex Chief Executive Officer and Others v. Assam Roller Flour Mills Association and Another*, (2022) 1 SCC 101.

Secondly, the penalty imposable under clause (b) is five times the duty payable without there being any cap, whereas Section 57 of 1915 Act specifically states that the penalty cannot exceed ₹50,000/- (Rupees fifty thousand only).

Accordingly, the present special leave petitions are dismissed.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
AR-CUM-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR