IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9444 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
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SCHOTT GLASS INDIA PVT LTD
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR HR PRAJAPATI(674) for the Petitioner(s) No. 1
MS DIXA PANDYA AGP for the Respondent(s) No. 1,2
NOTICE SERVED BY DS for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 01/04/2026

ORAL JUDGMENT

1. Present petition is filed under Article 226 of the Constitution of India and under the provisions of Essential Commodities Act, 1956 (for short "the E.C. Act) seeking following reliefs:-

> *(A) Your Lordships be pleased to issue writ of mandamus or any other appropriate writ, order or direction and be pleased to quash and set aside the impugned order dated 8-7-2008 passed by the respondent no.2 as being illegal, invalid, null and void, without jurisdiction and competence, arbitrary, capricious, unjust, unfair, against the principles of*

natural justice and violative of Art. 14, 19 and 21 of the Constitution of India.

(B) Your Lordships be pleased to issue writ of mandamus or any other appropriate writ, order or direction and be pleased to direct the respondent no. 2 to grant renewal application of the petitioner company and also direct the respondent no. 2 to increase limit of stock of furnace oil in the license as required by the petitioner company and may go on increasing the same in future so as to enable the petitioner company to run its plant for 24 hours.

(C) Your Lordship may be pleased to stay implementation, execution and operation of the order dated 8-7-2008 passed by the respondent no.2 pending the admission, hearing and final disposal of this petition.

(D) Your Lordship may be pleased to direct the respondent no. 3 to continue supply of furnace oil and LDO pending the admission, hearing and final disposal of this petition.

(E) Your Lordship be pleased to grant such other and further reliefs, as are deemed fit, in the interest of justice.

2. Brief facts of the present case are, in nutshell, as under:-

2.1 That the petitioner is a company incorporated and registered under the Companies Act and engaged in doing the business of manufacturing pharmaceutical packaging products, the process is continuous process and factory is running 24 hours and the company is using furnace oil as fuel in furnace over and above other fuels viz. gas obtained from GAIL, Liquefied Natural Gas etc. That the company had made an application under the Solvent Control Order for the purpose of granting license and at the relevant time the need of the petitioner of furnace oil is 3200 KL and LDO 2500 KL, which came to be granted by respondent No.2 and issuance of license date was 09.01.2006 and valid upto 31.12.2006 with certain terms and

conditions. That the license was issued by respondent No.2 was for a period of one year and, thereafter, the same shall be renewed for two years on each occasion. That the petitioner wanted to increase the limit of stock of furnace oil from IOC, the company had preferred an application before respondent No.2 with a request to amend the license and allot the stock of furnace oil quantity to the extent of 6000 KL per year.

2.2 That the application of the petitioner was sent for inquiry through the Sub – Divisional Magistrate, Bharuch and the Sub – Divisional Magistrate, vide its letter dated 24.11.2006 reported to the District Supply Officer, Bharuch that there was no objection, if the limit was increased of furnace oil. That though the period of license was to expire on 31.12.2006, the petitioner has preferred application for renewal of license for the year 2007, but the petitioner failed to attach the challan receipt for renewal of license fees, the company had sent with forwarding letter dated 01.12.2006.

2.3 That without issuing notice, respondent No.1 rejected the application for renewal of license on the ground that the petitioner was permitted to use 3200 KL per year, but looking to the annual patrak of fuel consumption by the company, it was exceeded to the tune of 761.7304 KL furnace oil and, therefore, the request for renewing solvent license was rejected.

2.4 That after the said order, the petitioner wrote a letter for renewing license and thereafter the petitioner had written a letter dated 01.05.2007 to the District Supply Officer requesting that the recommendation letter may be returned to OICL for not stopping the supply as request was made by the letter dated 23.04.2007 to

respondent No.2 to renew the license. That the petitioner was asked to give undertaking that for renewing the license, the petitioner was ready and willing to pay fine.

2.5 That the respondent No.2 passed an order on 04.05.2007 imposing penalty of Rs.24,98,743.50 for the breach of condition of license and the provisions of the Solvent Control Order on the ground that the petitioner had used 761 KL furnace oil excess than the limit fixed in the license. The license was renewed for further period of 31.12.2007 by order dated 04.05.2007.

2.6 The being aggrieved by order dated 04.05.2007, the petitioner had filed an appeal before respondent No.1 pointing out the facts, under which the petitioner had to use excess stock, however, respondent No.2 without granting any opportunity of hearing and issuing notice did not renew the license. The respondent No.1 directed respondent No.2 to grant opportunity of hearing to the petitioner and to take fresh decision and the company had filed its reply.

2.7 That the petitioner had submitted an application to respondent No.2 for renewing the license and additional quota of furnace oil. Till date, respondent No.1 had not taken any decision on the appeal and the petitioner had written letter to respondent No.2 pointing out that the petitioner had filed an appeal against the order dated 11.02.2008. That the petitioner had submitted bank guarantee, in view of the pendency of the appeal before respondent No.1 and despite the bank guarantee, respondent No.2 insisted that the company should deposit amount and, therefore, it had paid amount of penalty.

2.8 That in the meantime, respondent No.2 issued show-cause

notice showing the fact that the petitioner had consumed stock of 1895.495 KL furnace oil excess in the year 2007 and thereby committed breach of provisions of the Solvent Control Order 2000 to which the petitioner submitted its reply to respondent No.2. That in the order dated 08.07.2008, it was stated that the license was renewed in the year 2000 and in the said license shock limit was shown for furnace oil was 3200 KL and for LDO 2500 Kl and, therefore, there was no need to request for increasing the limit. It was also stated in the order that despite there was a limit of consumption of stock of furnace oil 3200 KL per year in the year 2007, the petitioner had consumed 5095.459 KL and the consumed stock of 1895.459 KL and thereby committed breach of the conditions of the license and since this being second default, the explanation of the petitioner cannot be accepted and considering the value of excess stock of 1895.459, 15% penalty was imposed to the tune of Rs.1,01,75,928/-. It was further ordered that if the said amount was not deposited within the period of seven years, the application for renewal of the license would be rejected.

3. Being aggrieved and dissatisfied with the said action, the present petition is filed by the petition.

4. This Court (Coram: Hon’ble Mr.Justice Jayant Patel), has, while issuing notice, granted ad-interim order i.e. there shall not be any coercive steps for recovery and the application of the petitioner for renewal shall not be rejected till further orders.

5. Heard Mr.H. R. Prajapati, learned counsel for the petitioner and Ms.Dixa, learned Assistant Government Pleader for the respondents. Perused the material placed on record.

6. Mr.Prajapati, learned counsel for the petitioner has submitted the same facts which are narrated in the memo of petition and also submitted that the impugned order passed by the respondent is illegal, unjust and against the principles of natural justice and the approach of respondent No.2 is not justified in the eyes of law. He has submitted that there is no provision under the Solvent Control Order, 2000 which empowers respondent No.2 to impose penalty for the breach of conditions of the license and there is also no provision of cancelling the license in the Solvent Control Order, 2000. He has submitted that before 2000 there was no prohibition or restriction in using furnace oil for personal consumption and since, the petitioner is running the unit the application was made. He has submitted that a request of the petitioner for extending the limit ought to have been granted by respondent No.2 since there was no illegality or irregularity being committed by the petitioner and the petitioner had time and again requested respondent No.2 to increase the limit of stock of furnace oil. According to learned counsel, while requesting the license for the period 2007, respondent No.2 was well aware that the request of the petitioner for expanding the limit of stock of furnace oil was pending, no decision was taken and after completion of one year, respondent No.2 made out a case that the petitioner had committed breach of conditions of the license by consuming excess stock of furnace oil. He has further submitted that the company has been supplied with stock of surface oil by the IOCL even for the period 2007 and 2008 upto till date and IOCL was informed by respondent No.2 that the petitioner should be continued to supply with stock of furnace oil. Mr.Prajapati, learned counsel has submitted that the petition deserves to be allowed and the impugned order deserves to be quashed and set aside.

7. Ms.Pandya, learned Assistant Government Pleader for the respondents has referred to the affidavit-in-reply filed on behalf of the respondents – authorities and has submitted that the request made by the petitioner in increasing the limit of furnace oil was not granted and only positive opinion to increase the stock was given by S.D.M. and the petitioner has used permissible limit which was granted in license and thereby the petitioner has used excess unit of the furnace oil and committed misconduct. She has submitted that while renewing the license, the respondent – authority has imposed penalty of Rs.24,98,743/-, which came to be paid by the petitioner till 31.12.2007 and again applied for renewal and during the course of inquiry, it came to the notice of the authority that the petitioner has used the excess unit of furnace oil to the extent of 1895.459 KL and, therefore, after considering the control order issued by the Ministry of Petroleum and Natural Gas, the respondent – authority has passed the impugned order. She has submitted that there is no any illegality and infirmity in the impugned order passed by the authority and, therefore, the petition being meritless deserves to be dismissed and the impugned order deserves to be confirmed.

8. Considering the facts and circumstances of the case, the issue involved in the petition is whether the respondent – authority has power to impose such penalty under the statute or not, for which the learned counsel of the petitioners has relied upon the decisions of the Hon'ble Supreme Court in the case of **State of Bihar Vs. Industrial Corporation Pvt. Limited** reported in **(2003) 11 SCC 465** and **State of Uttar Pradesh Vs. Saraya Industries Limited** reported in **(2006) 11 SCC 129**.

9. In the case of **Industrial Corporation Pvt. Limited** (supra) , the Hon'ble Supreme Court has held and observed in paras – 8, 14, 16, 17 and 18 as under:-

> ***8.*** *The appellant in imposing the penalty, presumably was of the view that the respondents herein had diverted the molasses towards manufacturing either country liquor or liquor, which is fit for human consumption.*
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> ***14.*** *Coming to the first ground, it is not disputed that no opportunity of hearing of any kind was afforded to the respondents herein before the penalty was sought to be imposed and recovered. It is also admitted that there was no adjudication of the alleged breach of condition No. 8 of the tender notice. In A. Mohammed Basheer vs. State of Kerala and Ors. - (2003) 6 SCC 159, it was held that unless there is a determination of breach of contract and damages are quantified, no damages can be imposed and recovered. In General Manager, North East Frontier Railway and Ors. vs. Dinabandhu Chakraborty, reported in (1.971) 3 SCC 883, this Court held that the Government cannot be a judge in its own cause in absence of any statutory provision empowering it to act as such. In M/s. Vishnu Rice Mill, Bilaspur vs. Regional Food Controller, Bareitly & Ors. - 1984 All LJ 592 it was held by Allahabad High Court as under :*
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> "*Learned Standing Counsel, however, contended that the State Government was justified in withholding both the price payable to the petitioner and the release certificate claimed by the petitioner if it could be shown that the claimed by the petitioner if it could be shown that the petitioner had failed to perform its obligation under the agreement between the parties. Learned Standing Counsel placed reliance upon Cl. 9 of the said Order which has been quoted above. In our opinion, this contention of the learned Standing Counsel is not tenable. Cl. 9 itself shows that even though the State Government has a statutory authority to direct a rice miller, still, the terms and conditions on which the Government paddy will be converted into rice by the licensed rice miller will be 'such terms and conditions as may be agreed upon'. The agreement itself containing the terms and conditions cannot be said to be a statutory contract merely because*

the State Government has a right under Cl. 9 to direct a rice mill to convert paddy into rice. It has been stated above that along with the counter-affidavit annexure C.A. 1 has been annexed, which is said to be the agreement between the parties. In Cl. 11 of the said agreement there is a provision for arbitration in case of dispute, difference, or question touching or arising out of the agreement or the subject- matter thereof. In our view, if the State Government has any grievance that the licensed miller has failed to fulfill the terms and conditions of the said agreement between the parties, it is not open to the State Government to seek its redress in respect of such grievance by withholding the release certificate under Cl. 3(4) or by withholding or by making any deduction from the price which is payable by the State Government to the petitioner under Cl. 7 of the said Order."

16. *In the present case, what we find is that before creating a demand of penal duty or penalty, there was no adjudication by any authority as regard to the breach committed by the respondents. We also find that no opportunity of any kind was offered to the respondents before the demand as regard the penal duty was pressed against the respondents. The matter was not even examined as to what was the reason for shortfall in the production of rectified spirit. The Molasses Act does not provide for imposition of such penalty in the event of shortfall of spirit. It must, therefore, necessarily be held that the imposition of the impugned penalty being against the principles of natural justice is illegal and void.*

17. *The statutory authorities must act within the four-corners of a statute. They could take recourse to the proceeding for levy of penalty and the recovery thereof from the respondents only in the event there existed any agreement or statutory provision therefor. Such a power did not exist in the Commissioner of Excise or the Superintendents of Excise who had issued the impugned demand notices.*

18. *The statutory authorities also could not have sought to levy penalty relying on or on the basis of the audit report only. They were required to apply their own independent mind for the purpose of finding out as to whether the respondents in law had committed any breach of the terms*

> *and conditions of licence or the provisions of 1947 or 1915 Acts so as to make them liable for levy of penalty. The concerned authorities acting in terms of the statutory provisions, therefore, without any further investigation could not have acted mechanically on the audit report.*

10. In the case of **Saraya Industries Limited** (supra), the Hon'ble Supreme Court has held and observed in para – 31 as under:-

> ***31.*** *The legislative field in regard to levy of excise duty is covered by Entry 51, List II of the Seventh Schedule of the Constitution of India. It may be true that the resort to regulatory measures can be taken by the State, but the same must be done in the manner laid down under the Act. A provision which confers powers upon a statutory authority in terms whereof a penalty is to be imposed, damages are to be paid for non payment of excise duty, in our opinion, must be done through a valid subordinate legislation and not by way of issuance of a circular letter.*

11. Now considering the aforesaid facts and the submissions of learned counsel for both the sides and the averments made in the petition as well as the decisions cited at the Bar and on perusal of the provisions of the E.C. Act more particularly the Control Order of 2000, it appears that the respondent – authority has no authority to impose any penalty in other word, the provision which confers powers upon a statutory authority in terms whereof a penalty is to be imposed, damages are to be paid for non payment of excise duty, in the opinion of the Hon'ble Supreme Court was without jurisdiction as legislation cannot be overridden by way of issuance of a circular letter. While examining the Control Order, it appears that there was no provision at all to impose any penalty which was imposed in the present case, which was mentioned in the impugned order. It is not the case of the respondents that the petitioner was doing any illegal activities or any trade in furnace oil and the petitioner is using furnace oil to run

furnace in manufacturing product and merely because the petitioner has used excess amount of furnace oil, that was also, when the application was kept pending by respondent No.2 for uncertain period for increasing the stock. It is an admitted fact that the petitioner has, while applying for renewal of license, filed an application to increase the limit of furnace oil which was granted in favour of the petitioner as there was usage of furnace oil had increased because of the manufacturing activities was increased. Under that circumstances, the order of imposing 15% penalty is absolutely unjustifiable and illegal as it was not provided under the statute or under the Control Order. It is also an admitted fact that the petitioner is not in business of selling or transporting the furnace oil as it was mentioned in the Control Order and, therefore, the order passed by the Appellate Authority confirming the order passed by respondent No.2 is completely illegal and unjust and the same deserves to be quashed and set aside.

12. The statutory authorities must act within frame work of a statute. They could take recourse to the proceeding for levy of penalty and the recovery thereof from the petitioner only in the event there existed any agreement or statutory provision therefor. If such power is not existing in the Act or in the Control Order then the order passed by respondent No.2 and confirmed in appeal is wholly unauthorized and, therefore, this Court is of the opinion that the respondent – authority has committed an error of law and facts in passing the impugned order and the same deserves to be quashed and set aside.

13. In the result, the petition is allowed. The impugned order passed by respondent No.2 is hereby quashed and set aside. If the petitioner has deposited such amount of penalty imposed by the

respondent – authority, the same shall be refunded to the petitioner. The respondent – authority shall consider the application for increasing the stock as requested by the petitioner in accordance with law and without influenced by the order passed by this Court in the present petition. Rule is made absolute. There shall be no order as to costs.

(HEMANT M. PRACHCHHAK,J)

V.R. PANCHAL

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VIJAYKUMAR RAMESHBHAI PANCHAL(HC00171), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 04/04/2026 10:42:15