

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Review Petition No. 114 of 2025****Reserved on: 23.3.2026****Date of decision: 8.4.2026****State of H.P. & others. ...Review-Petitioners.****Versus****Mars Bottlers Una & Another. ...Respondents.****Corum*****Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******Hon'ble Mr. Justice Sushil Kukreja, Judge.******Whether approved for reporting?¹ Yes***

For the Petitioners. Mr.Anup Rattan, Advocate General, with Mr.SushantKeprate, Additional Advocate General and Ms.Swati Draik, Deputy Advocate General.

For the Respondents: Mr.Desh Raj Thakur, Advocate.

Vivek Singh Thakur, Judge

This Review Petition has been preferred by the State against the impugned judgment dated 23.9.2025 passed in CWP No. 8561 of 2024, which was preferred by respondent No. 1-Mars Bottlers (respondent herein) against the petitioners as well as respondent No. 2. Following directions have been passed by this Court vide judgment dated 23.9.2025 allowing the Writ Petition:

“39. In view of above, orders dated 15.6.2024 and 9.12.2024 are quashed and set aside and the Commissioner, State Taxes and Excise is directed to determine appropriate compounding fee in consonance with the

¹***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

relevant provisions, in the light of aforesaid observations, within 15 days of passing of this order and, thereafter, to pass an appropriate order with respect to renewal of licence of the petitioner.”

2. Learned Advocate General has submitted that Review Petition has been preferred on three grounds. First that plea of learned counsel for respondent No. 1-Petitioner that application for renewal of old licence can be made even at delayed stage and on such application, Commissioner Excise with approval of Financial Commissioner, on payment of fee chargeable for renewal of such application, can renew the licence, was disputed on behalf of review petitioners-State, but in para 36 of the impugned judgment, it has been recorded that aforesaid plea has not been disputed. It has been submitted that Punjab Distillery Rules, 1932 are applicable in State of Himachal Pradesh, but subject to amendment carried out therein time to time and vide Notification dated 31.3.1994 issued by Excise and Taxation Department of Himachal Pradesh, Punjab Distillery Rules, 1932 stand amended, wherein Rule 9.7 of the said Rules has been substituted and in the said substituted Rule 9.7, there is no provision for permitting to file an application for renewal, if not already filed at least 90 days before the expiry of year, for which licence has been granted or renewed.

3. Second, that in para 28 of the impugned judgment, it has been stated that offence alleged to have been committed under Sections 26, 43, 44, 45, 46, 47 or 59 of the Act were and are compoundable and it has been

observed that in view of Section 66 of the Act, penalty imposed by the Commissioner was highly disproportionate. It has been stated on behalf of review petitioners-State that this Court has referred Section 66 of the H.P. Excise Act, 2011 for issuing direction wherein Sections 39 III and IV of H.P. Excise Act, 2011 are not compoundable under Sections 66 or 67 of the Excise Act because illicit liquor recovered from a Truck No. HR-39D-8993, found in premises of bottling plant was 4274.640 BLS and quantity of the compounded illicit liquor was beyond the quantity of liquor for which compounding would be permissible and, therefore, penalty, imposed by the Review Petitioners-respondents, did not deserve to be interfered with.

4. Lastly, it has been submitted that validity of licence granted for the year 2023-24, stands expired on 31.3.2024 and as such licence stands canceled automatically as per Rule 9.7(1) and 9.7(2) of Punjab Distillery Rules, 1932, as applicable in the State of Himachal Pradesh, whereas there is no provision for considering application for renewal, if not filed at least 90 days before the expiry of year for which the licence had been granted or renewed.

5. With regard to first contention, it is clarified that so far as we remember, the plea of the Review Petitioners that Punjab Distillery Rules, 1932, as amended on 27.11.1963 contained provision of permitting filing of application at belated stage, if not already filed at least 90 days before the expiry of the permit/licence, was not rebutted by producing any notification or modification, as now has been done by producing copy of notification

dated 31.3.1994. Be that as it may, even if para 36 of the impugned judgment is omitted, the said omission shall not have any impact on the findings returned by this Court in the impugned judgment, because the impugned judgment has not been passed on the basis of any concession of learned Advocate General or Review Petitioners-respondents. Even if para 36 of the impugned judgment is modified to the extent that aforesaid plea has been disputed by the Review Petitioners-respondents, there was and is nothing on record to rebut the plea of respondent No. 1-petitioner, and impugned judgment has been passed by considering the material placed before the Court and not on the basis of or referring any provisions of the Punjab Distillery Rules, 1932, as amended on 27.11.1963 or on the basis of notification dated 31.3.1994. In the given facts and circumstances, including the circumstances mentioned in paras 34 and 37 of the impugned judgment read with para 38 thereof, we are of the considered opinion that even if plea taken by learned counsel for respondent No.1-petitioner in para 35 is recorded as disputed submission, in para 36, the facts and circumstances on the basis of which direction has been given to the Review Petitioners-respondents, especially Commissioner State Taxes and Excise, shall not be impacted in any manner.

6. Though, we have clarified hereinbefore that the directions passed by the Court in impugned judgment are not based on para 36 thereof and the provisions of Punjab Distillery Rules, 1932, as amended on 27.11.1963 or the Punjab Distillery Rules, 1932, as amended vide

notification dated 31.3.1994, are not basis of directions issued by the Court, but the directions has been issued by exercising inherent powers vested with the Court on the basis of judicial review of administrative action which on the basis of facts on record has been found doubtful and action taken by the Review Petitioners-respondents with regard to imposing penalty, has been held highly disproportionate.

7. Though, as clarified supra, we have not based our findings on the basis of provisions contained in Punjab Distillery Rules, 1932, as amended on 27.11.1963, however, to avoid any misconception, we are recording the submissions made by learned Advocate General as well as learned counsel for respondent No. 1-petitioner in this regard with our observation thereafter.

8. Admittedly, area in which distillery is located, earlier was part of State of Punjab before 1.11.1966 and it was transferred from Punjab to Himachal Pradesh on enactment of Punjab Reorganisation Act, 1966 with appointed day 1.11.1966. Referring Sections 5, 88 and 89 of The Punjab Reorganisation Act, 1966 Act, it has been contended that in the area in question prior to 1966 Punjab Distillery Rules, 1932 as amended on 27.11.1963 were in force and by virtue of Section 88 of the Punjab Reorganisation Act, they were continued to remain in force until otherwise provided by competent legislature or other competent authority, and in absence of expressed modification, substitution or amendment, the law which were in force before 1.1.1966 shall not be deemed to have been

effected any change. It has been submitted that Section 89 of Punjab Reorganisation Act provides that any laws made before the appointed day could have been adopted, modified either by repeal or amendment before expiration of 2 years from the appointed day, and thereupon every law shall have effect subject to adaptation and modification so made until altered, repealed or amended by competent legislature or any other competent authority.

9. Sections 5, 88 and 89 of the Punjab Reorganisation Act, 1966 read as under:-

“5. Transfer of territory from Punjab to Himachal Pradesh.—(1) On and from the appointed day, there shall be added to the Union territory of Himachal Pradesh the territories in the existing State of Punjab comprised in-

- (a) Simla, Kangra, Kulu and Lahaul and Spiti districts;
- (b) Nalagarh tahsil of Ambala district;
- (c) Lohara, Amb and Una kanungo circles of Una tahsil of Hoshiarpur district;
- (d) the territories in Santokhgarh kanungo circle of Una tahsil of Hoshiarpur district specified in Part I of the Third Schedule;
- (e) the territories in Una tahsil of Hoshiarpur district specified in Part II of the Third Schedule; and

....

....

....

88. Territorial extent of laws.—The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

89. Power to adapt laws.—For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority.

Explanation.—In this section, the expression “appropriate Government” means—

- (a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and
- (b) as respects any other law,—
 - (i) in its application to a State, the State Government, and
 - (ii) in its application to a Union territory, the Central Government.”

10. It has been submitted by learned counsel for respondent No. 1-Petitioner that there is nothing on record or otherwise available anywhere that the Punjab Distillery Rules, 1932, as amended on 27.11.1963, which were applicable to the area in reference before 1966, were ever modified, repealed or substituted by invoking Sections 88 and 89 of the Punjab Reorganisation Act, 1966.

11. It has been further contended by learned counsel for respondent No. 1-petitioner that State of Himachal Pradesh was established by the State of Himachal Pradesh Act, 1970 which was enacted on 25.12.1970 and was given effect from 25.1.1971, comprising the territories which immediately before appointed day were comprised in the existing Union Territory of Himachal Pradesh. He has submitted that the

law in force immediately before appointed day in the existing Union Territory of Himachal Pradesh by virtue of Section 49 of State of H.P. Act, 1970 were continued to be in force in the State of Himachal Pradesh until altered, repealed or amended by competent legislature or competent authority.

12. Sections 3 and 49 of the State of Himachal Pradesh Act, 1970 referred by learned counsel for respondent No. 1-petitioner are as under:-

“3. Establishment of State of Himachal Pradesh.—On and from the appointed day, there shall be established a new State, to be known as the State of Himachal Pradesh, comprising the territories which immediately before that day were comprised in the existing Union territory of Himachal Pradesh.

49. Continuance of existing laws and their adaptation.—(1) All laws in force, immediately before the appointed day, in the existing Union territory of Himachal Pradesh shall continue to be in force in the State of Himachal Pradesh until altered, repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of facilitating the application in relation to the State of Himachal Pradesh of any law made before the appointed day, the appropriate Government may, within two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression “appropriate Government” means, as respects any law relating to a matter enumerated in the Union List in the Seventh Schedule to the Constitution, the Central Government; and as respects any other law, the Government of the State of Himachal Pradesh.”

13. According to learned counsel for respondent No. 1-petitioner, the laws especially Punjab Distillery Rules, 1932 which amendment dated 27.11.1963, as applicable to the area in reference prior to 1.1.1966, were never replaced till, 1971 and after 1971, there is no change in the application of Punjab Distillery Rules, 1932 to the area in reference and thus Rule 7 providing filing of application for renewal of licence, even at a later stage, if not filed at least 90 days before expiry of licence, is applicable to the area in reference.

14. Learned Advocate General has submitted that in view of amendment carried out by Himachal Pradesh in Punjab Distillery Rules, 1932 vide notification dated 31.3.1994, relevant provisions of the Punjab Distillery Rules, 1932, as amended on 27.11.1963 have lost its efficacy and the rules as amended by the State of Himachal Pradesh in 1994 shall be applicable, and in these Rules, there is no provision for submitting application at delayed stage, if not filed 90 days prior to expiry of licence.

15. Learned counsel for respondent No. 1-petitioner has submitted that notification dated 31.3.1994 deals with amendment in Punjab Distillery Rules, 1932, as applicable in the area, which were part of State of Himachal Pradesh, immediately before 1.11.1966 and, therefore, this notification does not modify or amend the Punjab Distillery Rules, 1932, as applicable to the area in reference which was not part of Himachal Pradesh before 1.11.1966, because for doing so Review Petitioners-Respondents-State had to carry out necessary amendment by invoking

Sections 88 and 89 of the Punjab Reorganisation Act, 1966 and Section 49 of the Himachal Pradesh Act, 1970, but there is no such notification available and thus the notification dated 31.3.1994 does not have any impact on the law, i.e. Punjab Distillery Rules, 1932, as applicable to the said area.

16. The plea of learned counsel for respondent No. 1-petitioner appears to be correct. The notification dated 31.3.1994 speaks about amendment in the Punjab Distillery Rules, 1932, which were applicable to the area of Himachal Pradesh immediately before 1.11.1966. Una was not part of Himachal Pradesh immediately before 1.11.1966. For carrying amendment or substitution in Rules applicable in Una, necessary notification in terms of Sections 88 and 89 of the Punjab Reorganisation Act, 1966 had to be issued firstly replacing the Punjab Distillery Rules, 1932, as applicable to other areas of Himachal Pradesh and to make uniform applicability of the Punjab Distillery Rules, 1932 in the entire State of Himachal Pradesh including the newly added area on 1.11.1966.

17. Before 1.11.1966 Una was in Punjab. The Punjab Distillery Rules, 1932 was adopted in Union Territory of Himachal Pradesh. These Rules became applicable to the areas included in Union Territory of Himachal Pradesh prior to 1.11.1966. Thus in the old Himachal Pradesh, Rules as enacted or made applicable continued to be in force as adopted at the time of constitution of C State of Himachal Pradesh on 15.4.1948. In newly added area in the State of Himachal Pradesh on 1.11.1966, the

Rules, as applicable prior to 1.11.1966, continued to be in force. Therefore, for the Una area, the Punjab Distillery Rules, 1932, as amended on 27.11.1963 continued to be in force. Vide notification dated 31.3.1994, Punjab Distillery Rules, 1932, which were applicable to the area, i.e. old Himachal Pradesh before 1.11.1966 were amended. There is nothing on record that Rules which became to be applicable to Una area, including the Punjab Distillery Rules, 1932, as amended on 27.11.1963, were ever modified and, therefore, the Punjab Distillery Rules, 1932 amended on 27.11.1963 are applicable to the present area in reference.

18. For making aforesaid observations, we have one more reason as transpiring on comparison of the Punjab Distillery Rules, 1932, as amended on 27.11.1963 with the provisions substituted by amendment notified vide notification dated 31.3.1994. The Punjab Distillery Rules, 1932, as existing on 1963 contains Rule 7, providing annual renewal of licence. The same reads as under:-

“7. (1) A license granted under these rules shall be valid for a period of one year from the date of issue unless it is cancelled determined or surrendered earlier and shall be renewable annually by the [Excise Commissioner with prior approval of the Financial Commissioner] on the application of the licensee on payment of [rupees eighty lakh]: Provided that such a license may be cancelled for breach of the terms thereof or may be determined by the [Excise Commissioner with prior approval of the Financial Commissioner] after giving the licensee six months notice.

(2) An application for the renewal of the license shall be made by the licensee to the Excise Commissioner as so to reach him at least 90 days before the expiry of the old license:

Provided that if such application is not made within such period, the [Excise Commissioner with prior approval of the Financial Commissioner] may renew the license, on payment off the fee chargeable for a new license.”

19. Vide notification dated 31.3.1994, provisions of Rule 9.7, have been substituted, which clearly indicates that amendment carried out vide notification dated 31.3.1994 is in the Punjab Distillery Rules, 1932, as applicable to the areas of Himachal Pradesh as existing before 1.11.1966, i.e. in old Himachal, which may have been opted in 1948. Whereas Una area came to be included in Himachal Pradesh in the year 1966 with the Punjab Distillery Rules, 1932, as existed on 27.11.1963, which are different than the unamended Punjab Distillery Rules, 1932 as existing in the year 1948. Therefore, also plea of the Review Petitioners-respondents-State with respect to applicability and non-applicability of the Punjab Distillery Rules, 1932 and amendment carried thereon is misconceived and is of no help to them.

20. It is also apt to record that even in absence of provision in the Rules for allowing the filing of application for renewal at a delayed stage, than the time provided for the same in the Rules, does not take away the power of this Court to allow renewal of licence, even in absence of such application or directing respondent No. 1-petitioner to file such application with further direction to the Commissioner, State Excise and Taxation to consider and allow such application in the given facts and circumstances of the present case.

21. Plea of Review Petitioners-State that in view of non-compounding Section of 39 III and IV of the Excise and Taxation Act, the directions for compounding offence deserves to be reviewed, is also not only misconceived, but unfounded. This Court in the given facts and circumstances is competent to issue any directions for the ends of justice by exercising the power under Article 226 of the Constitution of India. Therefore, this plea is liable to be rejected on this sole ground. It is also apt to notice that we have no where recorded that Section 39 (III) and (IV) of the H.P. Excise and Taxation Act is compoundable. As already stated supra that even on non-compoundable offence, the High Court is not inhibited for issuing direction to compound the same, but in present case Review Petitioners-respondents-State is claiming recovery of illicit liquor of 4274.640 BLS, loaded in truck No. HP-39D-8993. This recovery has been found highly unreliable and doubtful by this Court and, therefore, it has been concluded that action of Review Petitioners-respondents-State was and is highly disproportionate. Though, it has been already observed in the judgment under review, however, we would like to reiterate that in report submitted by the raiding party, violation of Sections 43 and 44 of the H.P. Excise and Taxation Act, has been reported. However, in the FIR dated 26.3.2024, which was registered about 9-10 days of alleged incident, it has been stated that liquor seized in the Truck was not bottled in the bottling plant, whereas in the report submitted on 16.3.2024, it has been stated that bottles loaded in the Truck were bottled in the plant.

22. It is also apt to record that in fact there is no physical evidence of recovery of alleged liquor from the Truck, because it itself is case of the Review Petitioner-State that the Truck was found abandoned on the road and the liquor found therein a day before, was also missing to a large extent. The entire material on record creates doubt about the veracity of the allegations leveled by the raiding party on respondent No. 2-petitioner and for that benefit of doubt, we are of the considered opinion that respondent No. 2-petitioner cannot be made to suffer for faulty inspection/interrogation or investigation. The benefit is likely to be extended to it.

23. We, for variation in the contents of the report of the raiding party and FIR, have found the story of the Review Petitioner-State highly improbable and thus we had directed the Commissioner Excise and Taxation to renew the licence of respondent No. 2 suo moto.

24. Before parting we would like to record that it appears from the pleadings of the Review Petition that Commissioner Excise and Taxation is making it an issue that direction has been given to compound the case of respondent No. 1-petitioner at his own level by compounding any appropriate penalty, whereas petitioner has not approached with any application for such renewal or extension. Though directions of the Court are self speaking and indicating clearly what action has to be taken by the Commissioner Excise and Taxation, for which no application as such is

required. The Commissioner Excise and Taxation has to abide by the judgment in accordance with law.

25. In view of above observations to avoid multiplicity of litigation, para 36 of the impugned judgment is ordered to be deleted. Despite that we do not find any error apparent on record, depicting any material irregularity or illegality so as to warranting exercise of discretion of review and accordingly Review Petition is dismissed with direction to omit para 36 from the impugned judgment. Necessary correction be carried out in the record by the Registry. Corrected judgment also be replaced from the judgment already uploaded on the website of High Court.

26. Needless to say that respondent No. 1-petitioner shall be at liberty to file appropriate application for renewal of its licence and if the same is filed within 15 days, the same shall be considered for grant and/or for renewal of licence and shall be decided with positive order by granting/allowing the licence after payment of compounding fee to be determined by the Commissioner Excise and Taxation, in consonance with the judgment/direction passed by this Court.

The Review Petition is disposed of in aforesaid terms.

**(Vivek Singh Thakur),
Judge.**

**(Sushil Kukreja),
Judge.**

8th April, 2026
(Keshav)