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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
PAMIDIGHANTAM SRI NARASIMHA; J., ARAVIND KUMAR; J.
APRIL 19, 2024
CIVIL APPEAL Nos. 5062-5099 of 2024 ARISING OUT OF SLP (C) Nos. 26571-26608 of 2017
PERNOD RICARD INDIA (P) LTD. *versus* THE STATE OF MADHYA PRADESH & ORS.

Madhya Pradesh Foreign Liquor Rules, 1996; Rule 19 – Penalty imposed as per the old Rule 19 is challenged to be invalid – Rule 19 amended by way of substitution – Process of substitution consists of two steps: first, the old rule is repealed, and next, a new rule is brought into existence in its place – A repealed provision will cease to operate from the date of repeal and the substituted provision will commence to operate from the date of its substitution subject to specific statutory prescription. Substituted Rule 19 is not been notified to operate from any other date by the Government. Held, the old Rule stood repealed from the statute book and only the substituted Rule applies to all pending and future proceedings. If the amendment by way of a substitution is intended to reduce the quantum of penalty for better administration and regulation there is no justification to ignore the subject and context of amendment and permit the State to recover the penalty as per the unamended Rule. *(Para 7, 9, 12, 13, 17 & 32)*

(Arising out of impugned final judgment and order dated 29-06-2017 in WA No. 425/2016 29-06-2017 in WA No. 100/2017 29-06-2017 in WA No. 6/2017 29-06-2017 in WA No. 7/2017 29-06-2017 in WA No. 8/2017 29-06-2017 in WA No. 9/2017 29-06-2017 in WA No. 10/2017 29-06-2017 in WA No. 11/2017 29-06-2017 in WA No. 12/2017 29-06-2017 in WA No. 13/2017 29-06-2017 in WA No. 14/2017 29-06-2017 in WA No. 15/2017 29-06-2017 in WA No. 16/2017 29-06-2017 in WA No. 17/2017 29-062017 in WA No. 19/2017 29-06-2017 in WA No. 20/2017 29-06-2017 in WA No. 21/2017 29-06-2017 in WA No. 22/2017 29-06-2017 in WA No. 23/2017 29-06-2017 in WA No. 24/2017 29-06-2017 in WA No. 25/2017 29-06-2017 in WA No. 26/2017 29-06-2017 in WA No. 27/2017 29-062017 in WA No. 28/2017 29-06-2017 in WA No. 29/2017 29-06-2017 in WA No. 30/2017 29-06-2017 in WA No. 31/2017 29-06-2017 in WA No. 32/2017 29-06-2017 in WA No. 33/2017 29-06-2017 in WA No. 34/2017 29-06-2017 in WA No. 35/2017 29-06-2017 in WA No. 36/2017 29-062017 in WA No. 37/2017 29-06-2017 in WA No. 38/2017 29-06-2017 in WA No. 39/2017 29-06-2017 in WA No. 40/2017 29-06-2017 in WA No. 41/2017 29-06-2017 in WA No. 42/2017 passed by the High Court of M.P. at Gwalior)

For Petitioner(s) Mr. Pratap Venugopal, Sr. Adv. Ms. Surekha Raman, Adv. Mr. Amarjit Singh Bedi, Adv. Mr. Abhishek Anand, Adv. Ms. Unnimaya S, Adv. Mr. Shreyash Kumar, Adv. M/S. K J John and Co, AOR

For Respondent(s) Mr. Saurabh Mishra, A.A.G. Mr. Sunny Choudhary, AOR Mr. Sandeep Sharma, Adv. 1 Mr. Manoj Kumar, Adv. Mr. Karan Bishnoi, Adv. Mr. Utkarsh Mishra, Adv.

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave Granted.

2. The short question for our consideration is the applicability of the relevant rule for imposition of penalty; whether it is the rule that existed when the violation occurred during the license period of 2009-10 or the rule that was substituted in 2011 when proceedings for penalty were initiated. As the substituted rule reduced the quantum of penalty, the appellant insists on its application but the statutory authorities as well as the Division Bench of the High Court rejected his case and imposed higher penalty under the old rule.

2.1 For the reasons to follow, we have accepted the contention of the appellant and, in allowing the appeal, determined that the purpose of the amendment is to achieve a proper balance between crime and punishment or the offence and penalty. In light of this, and

recognizing that classifying offenders into before or after the amendment for imposing higher and lower penalties does not serve any public interest, we have directed that the substituted Rule alone will apply to pending proceedings.

3. Facts:- The appellant is a sub-licensee under the M.P. Excise Act, 1915[1] for manufacture, import and sale of Foreign Liquor, regulated under the Madhya Pradesh Foreign Liquor Rules, 1996[2].

3.1 Sub-licensees importing Foreign Liquor are granted transit permits in which the origin, quality, quantity and point of delivery of the imported liquor are recorded. At the point of destination, the consignment is verified for quality and quantity, and a certificate under Rule 13 is granted. Rule 16 prescribes the permissible limits of loss of liquor in transit due to leakage, evaporation, wastage etc. The purpose and object of this Rule is to prevent illegal diversion of liquor for unlawful sale and also to prevent evasion of excise duty. Relevant portion of Rule 16 is as follows:-

*"Rule 16. **Permissible limits of losses**.-*

(1) An allowance shall be made for the actual loss of spirit by leakage, evaporation etc., and of bottled foreign liquor by breakage caused by loading, unloading, handling etc. in transit, at the rate mentioned hereinafter. The total quantity of bottled foreign liquor transported or exported shall be the basis for computation of permissible losses.

(2) Wastage allowances on the spirit transported to the premises of FL 9 or FL 9-A licensee shall be the same as given in sub-rule (4) of Rule 6 of the Distillery Rules, 1995.

(3) Maximum wastage allowance for all exports of bottled foreign liquor shall be 0.25% irrespective of distance.

(4) Maximum wastage allowance for all transports of bottled foreign liquor shall be 0.1% if the selling licensee and the purchasing licensee belong to the same district. It shall be 0.25% if they belong to different districts.

(5) If wastages/losses during the export or transport of bottled foreign liquor exceed the permissible limit prescribed in sub-rule (3) or (4), the prescribed duty on such excess wastage of bottled foreign liquor shall be recovered from the licensee."

3.2 If the permissible limits of loss of liquor are exceeded, the 1996 Rules prescribe imposition of penalty. Rule 19 providing for penalty that could be imposed during the relevant license period of 2009-2010 was about four times the maximum duty payable on foreign liquor. The relevant portion of Rule 19 is as follows: -

*"Rule 19. **Penalties**[3]. –*

(1) Without prejudice to the provisions of the Act, or condition No. 4 of license in Form F.L. 1, condition No. 7 of license in Form F.L 2, condition No. 4 of license in Form F.L 3, the Excise Commissioner or the Collector may impose a penalty not exceeding Rs. 50,000 for contravention of any of these rules or the provisions of the Act or any other rules made under the Act or the order issued by the Excise Commissioner.

(2) On all deficiencies in excess of the limits allowed under Rule 16 and Rule 17, the F.L. 9 or FL 9-A, F.L. 10-A or F.L. 10-B licensee shall be liable to pay penalty at a rate exceeding three times but not exceeding four times the maximum duty payable on foreign liquor at that time, as may be imposed by the Excise Commissioner or any officer authorized by him:

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[1] Hereinafter referred to as "the Act".
[2] Hereinafter referred to as "the 1996 Rules".
[3] Hereinafter "the old Rule".

Provided that if it be proved to the satisfaction of the Excise Commissioner or the authorized officer that such excess deficiency or loss was due to some unavoidable cause, like fire or accident and its first information report was lodged in Police Station, he may waive the penalty imposable under this sub-rule.

(3) The Excise Commissioner or the Collector may suspend or cancel the license under Section 31 of the Act upon a contravention of any of these rules or provisions of the Act, or any other rules made under the Act, or the orders issued by the Excise Commissioner."

4. Facts reveal that no action was initiated during the license year of 2009-2010.

5. On 29.03.2011, Rule 19 was substituted by an amendment. The relevant portion of substituted provision is as follows:

"Rule 19. ***Penalties***[4]

(1)…

(2) On all deficiencies in excess of the limits allowed under rule 16 and rule 17, the F.L.-9, F.L-9-A, F.L.-10-B Licensee shall be liable to pay penalty ***at a rate not exceeding the duty payable on foreign liquor at that time****, as may be imposed by the Excise Commissioner or any officer authorized by him:*

Provided that if it be proved to the satisfaction of the Excise Commissioner or the authorized officer that such excess deficiency or loss was due to some unavoidable causes like fire or accident and its First Information Report was lodged in concerned Police Station, he may waive the penalty imposable under this sub-rule."

(emphasis supplied)

6. As is evident, the above referred substituted Rule 19 reduces penalty from *four times the maximum duty payable* to an amount *not exceeding the duty payable* on foreign liquor.

7. Eight months after the amendment, a demand notice dated 22.11.2011 was issued directing payment of penalty for exceeding the permissible limits during the license year 20092010. The notice demanded penalty of four times the duty as per the old Rule 19. The appellant replied, *inter alia* contending that penalty, if any, can only be under the substituted Rule 19 as the old rule stood repealed, and in fact, the demand is raised after the substituted Rule came into force.

8. The Deputy Commissioner[5] rejected the objections raised by the appellant and confirmed the demand for payment of penalty at four times the duty payable. The Deputy Commissioner's order was upheld by the Excise Commissioner[6], and thereafter by the Revenue Board Gwalior[7].

9. Questioning the decisions of the statutory authorities, the appellant filed a writ petition before the High Court which was heard and disposed of with 40 other petitions raising a similar issue. The Single Judge of the High Court was of the view that the new Rule was introduced by way of a substitution and following the principles in *State of Rajasthan* v. *Mangilal Pindwal*[8]*, West U.P. Sugar Mills Association* v. *State of U.P.*[9]*, Zile Singh, Government of India* v. *Indian Tobacco Association*[10]*,* he held that the old Rule

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[4] Hereinafter, "the substituted Rule".
[5] By order dated 18.04.2012.
[6] By order dated 02.05.2013.
[7] By order dated 10.12.2013.
[8] (1996) 5 SCC 60.
[9] (2002) 2 SCC 645.
[10] (2005) 7 SCC 396.

stood repealed from the statute book and only the substituted Rule applies to all pending and future proceedings. He, therefore, set aside the orders of the statutory authorities and remanded the matter back to them for determining the penalty as per the substituted Rule.

10. The Division Bench of the High Court, by the order impugned herein, reversed the decision of the Single Judge on the simple ground that as the license was granted for one year, the Rule that existed during that license year must apply. The reason for not applying the substituted Rule according to the Division Bench is also that determination of penalty being substantive law, cannot operate retrospectively.

11. Questioning the legality and validity of the decision of the Division Bench of the High Court, the present appeals are filed. Mr. Pratap Venugopal, Ld. Senior Advocate, appearing on behalf of the appellant argued that the effect of substitution is to repeal the existing provision from the statute book in its entirety and to enforce the newly substituted provision. He would further submit that even for incidents which took place when the old Rule was in force, it is the substituted Rule that would be applicable, and therefore, the demand notice dated 22.11.2011 seeking payment of penalties under old Rule is illegal.

12. There is no difficulty in accepting the argument of Mr. Pratap Venugopal on principle. In *Koteswar Vittal Kamath* v. *K. Rangappa Baliga & Co.*[11], this Court brought out the distinction between *supersession* of a rule and *substitution* of a rule, and held that the process of substitution consists of two steps – first, the old rule is repealed, and next, a new rule is brought into existence in its place:

*"**8.** On that analogy, it was argued that, if we hold that the Prohibition Order of 1950, was invalid, the previous Prohibition Order of 1119, cannot be held to be revived. This argument ignores the distinction between supersession of a rule, and substitution of a rule. In the case of Firm A.T.B. Mehtab Majid & Co., the new Rule 16 was substituted for the old Rule 16. The process of substitution consists of two steps. First, the old rule it made to cease to exist and, next, the new rule is brought into existence in its place. Even if the new rule be invalid, the first step of the old rule ceasing to exist comes into effect, and it was for this reason that the court held that, on declaration of the new rule as invalid, the old rule could not be held to be revived."*

12.1 In *Zile Singh v. State of Haryana*[12], this Court referred to the legislative practice of an amendment by substitution and held that substitution would have the effect of amending the operation of law during the period in which it was in force.

*"**24.** The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.*

***25.** Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P*[13]*., State of Rajasthan v. Mangilal Pindwal*[14]*, Koteswar Vittal Kamath v. K. Rangappa Baliga and Co.*[15] *and A.L.V.R.S.T. Veerappa Chettiar v. I.S. Michael*[16] *. In West U.P. Sugar Mills Assn.*[17] *case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just*

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[11] (1969) 1 SCC 255.
[12] (2004) 8 SCC 1.
[13] (2002) 2 SCC 645.
[14] (1996) 5 SCC 60.
[15] (1969) 1 SCC 255.
[16] 1963 Supp (2) SCR 244.
[17] (2002) 2 SCC 645.

deleting the old rule and making the new rule operative. In Mangilal Pindwal[18] *case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case*[19] *a three-Judge Bench of this Court emphasised the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."*

12.2 A slight variation is noticed in a recent decision in *Gottumukkala Venkata Krishamraju* v. *Union of India*,[20] where this Court held that:

*"**18.** Ordinarily wherever the word "substitute" or "substitution" is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment" having a prospective effect. Therefore, we do not think that it is a universal rule that the word "substitution" necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that the legislature intended otherwise. Insofar as present case is concerned, as discussed hereinafter, the legislative intent was also to give effect to the amended provision even in respect of those incumbents who were in service as on 1-9-2016."*

13. The operation of repeal or substitution of a statutory provision is thus clear, a repealed provision will cease to operate from the date of repeal and the substituted provision will commence to operate from the date of its substitution. This principle is subject to specific statutory prescription. Statute can enable the repealed provision to continue to apply to transactions that have commenced before the repeal. Similarly, a substituted provision which operates prospectively, if it affects vested rights, subject to statutory prescriptions, can also operate retrospectively.

14. The principle governing subordinate legislation is slightly different in as much as the operation of a subordinate legislation is determined by the empowerment of the parent act. The legislative authorization enabling the executive to make rules prospectively or retrospectively is crucial. Without a statutory empowerment, subordinate legislation will always commence to operate only from the date of its issuance and at the same time, cease to exist from the date of its deletion or withdrawal. The reason for this distinction is in the supremacy of the Parliament and its control of executive action, being an important subject of administrative law.

15. We will now refer to the rule making power under the M.P. Excise Act, 1915. Section 62 of the Act empowers the State to make rules. Relevant portion of Section 62 is as follows: –

***"62. Power to make rules**.— (1) The State Government may make rules for the purpose of carrying out the provisions of this Act.*

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[18] (1996) 5 SCC 60.
[19] (1969) 1 SCC 255.
[20] (2019) 17 SCC 590.

(2) In particular, and without prejudice to the generality of the foregoing provision, the State Government may make rules—

(a) prescribing the powers and duties of Excise Officers;

(b) to (n) …

(3) The power conferred by this section of making rules is subject to the condition that the rules made under sub-section (2) (a), (b), (c), (e), (f), (i), (l) and (m) shall be made after previous publication :

Provided that any such rules may be made without previous publication if the State Government considers that they should be brought into force at once."

16. Section 62 does not enable the executive to continue the application of a repealed rule to events that have commenced during the subsistence of the Rule. However, Section 63 is of some importance. It enables the executive to operate the Rule from a date as may be specified in that behalf. Section 63 is reproduced as below:-

***"63. Publication of rules and notifications**.— All rules made and notifications issued under this Act shall be published in the Official Gazette, and shall have effect from the date of such publication or from such other date as may be specified in that behalf."*

17. It is clear that even Section 63 of the Act does not provide continuation of a repealed provision to rights and liabilities accrued during its subsistence. At the most, Section 63 of the M.P. Excise Act, 1915, only enables the government to issue subordinate legislation with effect from such a date as may be specified. We may mention at this very stage that Rule 19 which has been substituted on 29.03.2011 has not been notified to operate from any other date by the Government.

18. Faced with this situation, Mr. Saurabh Mishra, learned A.A.G. for the State, came up with an attractive argument that the State of M.P. can continue to apply the repealed Rule for the transaction of 2009-2010 by virtue of specific provisions under the Madhya Pradesh General Clauses Act, 1957. He brought to our notice Section 10 of the Act which is as follows:-

*"10. **Effect of Repeal**. Where any Madhya Pradesh Act repeals **any enactment** then, unless a different intention appears, the repeal shall not-*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed; or (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Madhya Pradesh Act had not been passed."

19. The above-referred Section of the MP General Clauses Act by itself would not make any difference as the Section is applicable only to enactments, i.e. when any M.P. Act repeals any *enactment* and not a subordinate legislation. Interpreting an identical provision of the General Clauses Act, 1897, i.e. Section 6, this Court has consistently held

that Section 6 of the General Clauses Act, 1897, has no application to subordinate legislation.[21]

20. Mr. Saurabh Mishra then referred to Section 31 of Madhya Pradesh General Clauses Act, 1957, which is as under:

*"31. **Application of Act to Ordinances and Regulations**.-*

The provisions of this Act shall apply, unless there is anything repugnant in the subject or context-

(a) to any Ordinance or Regulation as they apply in relation to Madhya Pradesh Acts:

Provided that sub-section (1) of section 3 of this Act shall apply to any Ordinance or Regulation as if for the reference in the said sub-section (1) to the day of the first publication of the assent to an Act in the Official Gazette there were substituted a reference to the day of the first publication of the Ordinance or the Regulation, as the case may be, in that Gazette;

(b) to the construction of rules, regulations, bye-laws, orders, notifications, schemes or forms made or issued under a Madhya Pradesh Act."

21. By virtue of Section 31, the provisions of the Madhya Pradesh General Clauses Act, 1957 are made applicable *to the construction of rules*. By such application, the principle of a repeal of a provision not affecting any liability incurred thereunder is also extended to the operation of the subordinate legislations under the Act. It is, therefore, submitted that having incurred the liability of exceeding the prescribed limits of losses of liquor for the license period 2009-10, the liability is not affected by the subsequent substitution of Rule 19.

22. This submission was not raised before the Single Judge or the Division Bench. However, as law operates irrespective of the choices of parties or their counsels in raising and referring to it in a court of law, we have permitted him to argue this question of law. We will now examine the application of Section 31 and its operation.

23. Section 31 of the M.P. General Clauses Act, 1957, relating to extension of its provisions to subordinate legislation is thus, distinct and more ambitious than that of its big sister, the General Clauses Act, 1897, the Central Legislation which extends its provisions to Ordinances and Regulations which are in the nature of legislation.[22] Conscious of the big leap to extend the M.P. General Clauses Act, 1957, for construction of subordinate legislations, Section 31 takes care to provide that it may be done only when it is not repugnant to the subject and context. In its own words – *unless there is anything g repugnant in the subject and context*.

24. Interpretation statutes such as the General Clauses Act, 1897, are enactments intended to set standards in *construction* of statutes. The expression construction is of seminal importance as it is oriented towards enabling a seeker of the text of a statute to understand the true meaning of the words and their intendment. Apart from setting coherent and consistent methods of understanding enactments, the interpretation statutes also subserve the purpose of reducing prolixity of legislations. The standard principles formulated in the interpretation statutes must, therefore, be read into any and every enactment falling for consideration.

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[21] *Rayala Corp.* v. *Director of Enforcement,* (1969) 2 SCC 412; *Kolhapur Canesugar Works Ltd.* v. *Union of India,* (2000) 2 SCC 536.

[22] Thus, this Court has held in a number of cases that the General Clauses Act, 1897 is only applicable to statutes.

25. In *Pushpa Devi* v. *Milkhi Ram*[23] while explaining the purpose and object of prefacing a definition or an interpretation with the phrase- "unless there is anything repugnant in the subject or context"- this court held :-

"19. *The opening sentence in the definition of the section states "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the legislature. Reference may be made to the observations of Wanchoo, J. in Vanguard Fire and General Insurance Co. Ltd. v. M/s Fraser and Ross [(1960) 3 SCR 857, 863: AIR 1960 SC 971: (1960) 30 Com Cas 13] where the learned Judge said that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context…*

20. *Great artistry on the bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the different fact situations coming before the court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislators to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. Indeed, the legislators do not deal with the specific controversies. When conflicting interests arise or defect appears from the language of the statute, the court by consideration of the legislative intent must supplement the written word with 'force and life'. See, the observation of Lord Denning in Seaford Court Estate Ltd. v. Asher [(1949) 2 KB 481, 498]."*

26. In *Vanguard Fire and General Insurance Co. Ltd.* v. *Fraser and Ross*[24] this Court held that:

"6. …That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word 'insurer' in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances…"

27. In the ultimate analysis, interpretation statutes or definitions in interpretation clauses are only internal aids of construction of a statute. Who do they aid? Interpretation is the exclusive domain of the Court.[25] A Constitutional Court is tasked with the sacred duty of interpreting the Constitution, Acts of Parliament or States, subordinate legislations, regulations, instructions and even to practices having force of law. Whichever or wherever the instrument, interpretation is the exclusive province of the Court.[26] The principle is aptly enunciated as:

"The Court has the function of authoritatively construing legislation, that is, determining its legal meaning so far as is necessary to decide a case before it. This function is exclusive to the Court, and a meaning found by any other person, for example an authorising agency, an investigating

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[23] (1990) 2 SCC 134.
[24] (1960) 3 SCR 857.
[25] *Keshavji Ravji & Co.* v. *Commissioner of Income Tax*, (1990) 2 SCC 231.
[26] *Dr. Major Meeta Sahai* v. *State of Bihar,* (2019) 20 SCC 17.

agency, an executing agency, a prosecuting agency, or even the legislature itself, except when intending to declare or amend the law, is always subject to the determination of the court.

It is usually said that the making of law, as opposed to its interpretation, is a matter for the legislature, and not for the courts, but, in so far as that legislature does not convey its intention clearly, expressly and completely, it is taken to require the court to spell out that intention where necessary. This may be done either by finding and declaring implications in the words used by the legislator, or by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy) and the purpose of the legislation. Whichever course is adopted, in accordance with the doctrine of precedent the court's operation influences the future legal meaning of the enactment by producing what may be called sub-rules, which are implied or expressed in the court's judgment."[27]

28. Subordinate legislation, by its very nature, rests upon the executive's understanding of the primary legislation. When a Court is of the opinion that such an understanding is not in consonance with the statute, it sets it aside for being *ultra-vires* to the primary statute.

29. We will now examine if there is anything repugnant to the subject or context to disapply the mandate of Section 31 of M.P. General Clauses Act, 1957, to the construction of the 1996 Rules. If the subject and context guide us in coming to that conclusion, we will not extend the effect of repeal in Section 10 of the MP General Clauses Act, 1957 to the repealed Rule 19. On the other hand, if the subject and context have no bearing on the construction of the Rule, then we will give effect to Section 10 and apply the repealed Rule to the liability incurred by the appellant during the license year 2009-10 and allow the imposition of four times the duty as penalty.

30. The 1996 Rules regulate the grant of license for manufacture and bottling of foreign liquor, procurement of spirit, storage, quality and control, sale, export, verification etc. Rule 19 provides for penalties for contravention of any of the Rules or provision of the Act. There are different penalties for violation of different rules.

31. The regulatory process requires the Government to deal with the problem of diversion and unlawful sale of foreign liquor and also provide an appropriate penalty and punishment. The process of identifying a crime and prescribing an appropriate punishment is a complex and delicate subject that the State has to handle while making rules and enforcing them. The gravity of the offence, its impact on society and human vulnerability are taken into account to provide the required measure of deterrence and reform. Day to day working of the Rules, reposing their effectiveness, ineffectiveness, deficiency of deterrence, disproportionate penalty having a chilling effect on genuine businesses, are some routine factors which require the executive to make necessary amendments to the rules. In this context, depending on the nature of offence, the proportionate penalty is required to be modulated from time to time. In light of this, we can appreciate that the felt need of the State to amend and substitute Rule 19 which provided a higher penalty at four times the duty, with a simple penalty not exceeding the duty payable.

32. If the amendment by way of a substitution in 2011 is intended to reduce the quantum of penalty for better administration and regulation of foreign liquor, there is no justification to ignore the subject and context of the amendment and permit the State to recover the penalty as per the unamended Rule. The subject of administration of liquor requires close monitoring and the amendment must be seen in this context of bringing about good

[27] *Halsbury's Laws*, (5th edn, 2018), vol 96, para 694.

governance and effective management. Seen in this context, the principle of Section 10 of MP General Clauses Act, 1957, relating continuation of a repealed provision to rights and liabilities that accrued during the subsistence of the Rule does not subserve the purpose and object of the amendment.

33. It is also submitted on behalf of the State that the substituted Rule cannot be given retrospective effect. We are not in agreement with this submission either. It is wrong to assume that the substituted Rule is given retrospective effect if its benefits are made available to pending proceedings or to those that have commenced after the substitution. Rule 19 which was substituted on 29.03.2011 is made applicable to proceedings that have commenced with the issuance of the demand notice in November, 2011. The Rule operates retroactively and thus saves it from arbitrarily classifying the offenders into two categories with no purpose to subserve.

34. The single Judge as well as the Division Bench have adopted two different approaches and we have not agreed with either of them. The single Judge was of the view that the amendment by way of substitution has the effect of repealing the law which existed as on the date of repeal. We have already explained the limitation in this approach. The Division Bench on the other hand, held that levy of penalty is substantive law, and as such, it cannot operate retrospectively. This again is a wrong approach. The substituted penalty only mollifies the rigour of the law by reducing the penalty from four times the duty to value of the duty. Therefore, the bar of Article 20(1)[28] of imposing a penalty greater than the one in force at the time of the commission of the offence has no application. While rejecting the reasoning of the single Judge as well as the Division Bench, we seek to underscore the importance of a simple and plain understanding of laws and its processes, keeping in mind the purpose and object for which they seek to govern and regulate us.

35. For the reasons stated above, we allow the appeals and set aside the judgment of the Division Bench of the High Court in Writ Appeals Nos. 425/2016, 6/2017, 7/2017, 8/2017, 9/2017, 10/2017, 11/2017, 12/2017, 13/2017, 14/2017, 15/2017, 16/2017, 17/2017, 19/2017, 20/2017, 21/2017, 22/2017, 23/2017, 24/2017, 25/2017, 26/2017, 27/2017, 28/2017, 29/2017, 30/2017, 31/2017, 32/2017, 33/2017, 34/2017, 35/2017, 36/2017, 37/2017, 38/2017, 39/2017, 40/2017, 41/2017, 42/2017 and 100/2017 dated 29.06.2017. We further hold that the penalty to be imposed on the appellants will be on the basis of Rule 19 as substituted on 29.03.2011. There shall be no order as to costs.

[28] *Rattan Lal* v. *State of Punjab,* 1964 SCC OnLine SC 40**;** *Basheer* v. *State of Kerala,* (2004) 3 SCC 609**;** *Nemi Chand* v. *State of Rajasthan,* (2018) 17 SCC 448**;** *Trilok Chand* v. *State of Himachal Pradesh,* (2020) 10 SCC 763**;** *M/s. A.K. Sarkar & Co. & Anr.* v. *The State of West Bengal & Ors.,* 2024 SCC OnLine SC 248.