

Commissioner of Income Tax & Anr. v. Distillers Co. Ltd.

Civil Appeal No. 1813 of 2007

[2007] 4 SCR 960 | 2007-04-05

Whether the arrack-maturation levy and label-cost amount were disallowable penalties or statutory tax/fee payments attracting section 43B.

43B

Two judges | S.B. Sinha, J. | Markandey Katju, J.

Assessment years: See the source-scope notes; no year inferred.

Specific licence-payment ruling: section 43B gateway and missing year

The judgment gives no assessment year. Its result concerns the permitted maturation exception and label costs under the particular Karnataka scheme; it does not authorize deduction of statutory penalties or dispense with actual payment where section 43B applies. Narrative payment wording does not establish a payment date. Costs and Rs. 25,000 counsel fee are part of the order. Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain not_verified.

01 FACTS OF THE CASE

The assessee carried on arrack bottling, manufacture of industrial alcohol and marketing under a Karnataka excise licence. Rule 14(3) of the 1987 Arrack Rules required maturity after blending in the manner and for the period specified by the Commissioner. The Commissioner's circular prescribed at least 15 days in wooden vats before bottling, but permitted earlier bottling, with the officer-in-charge's prior permission, where compliance was impossible for reasons beyond the unit's control. It called the additional charge 29 paise per bulk litre a penalty (physical 3-4/SCR 962-963, paragraphs 2-4).

The assessee obtained the appropriate permission when unable to meet the circular's first requirement and claimed the additional amount as a deduction. The assessment also concerned amounts for non-affixation of adhesive labels. The reproduced High Court questions put the combined disputed amount at Rs. 13,25,572, without dividing it between the two heads. The Supreme Court report gives no assessment year (physical 4-5/SCR 963-964, paragraphs 5-10).

The Assessing Officer treated the amount as penal and therefore not deductible; alternatively, because it had not been paid during the relevant period, the officer applied section 43B. CIT(A) allowed the claim, and the Tribunal characterized the payments as an additional levy rather than a penalty or excise duty. The High Court dismissed Revenue's section 260A appeal. On labels, it reasoned that the amount represented their cost to the Government when bottles were released without available labels, rather than a fee or penalty (physical 4-6/SCR 963-965, paragraphs 6-11).

Revenue maintained that non-compliance with statutory requirements made the amount penal and that section 43B required actual payment in the relevant year. The assessee supported the appellate decisions. Although parts of the narration describe payment or paying an additional amount, the reported assessment objection is specifically non-payment during the relevant period; the note does not invent a payment date to reconcile those formulations (physical 4-6, paragraphs 5-13).

Source: [reported judgment / paragraphs Paragraphs 2-13; combined Rs. 13,25,572 at paragraph 10 / PDF pages 3, 4, 5, 6 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court distinguished a penalty from excise duty on manufacture and from a licence-related charge. Excise duty on potable alcohol had to be traceable to statute under List II Entry 51 and relate to manufacture. The 15-day period was not set by rule 14(3) itself; the Commissioner's executive circular supplied it. The circular could not itself impose a tax on manufacture. On the scheme before the Court, the additional charge arose through the licence conditions and the State's regulatory/privilege power under Entry 8 (physical 6-7/SCR 965-966, paragraphs 14-15).

The judgment drew on *State of Kerala v. Maharashtra Distilleries* for the distinction between tax or fee and consideration charged for parting with a liquor privilege. It also noted that the State's monopoly power had limits. These constitutional and excise observations explain the payment's character in this income-tax appeal; they do not create an unrestricted present-day power over every kind of alcohol or every regulatory payment (physical 7-8/SCR 966-967, paragraphs 15-16).

The Court further emphasized that the maturity period was the Commissioner's stipulated bottling process, not an inherent requirement of manufacture, and that the circular was directed to trade regulation rather than public health. Blending itself was not prohibited. On that basis, the levy was not additional excise duty or tax on manufacture. The prescribed exception permitting early bottling and the additional levy cannot be restated as a general deduction for illegal business expenditure (physical 8/SCR 967 D-E, paragraph 17).

The specific section 43B conclusion followed from that characterization: the Tribunal and High Court were correct that the provision did not apply. The Court reiterated Article 265's requirement of statutory authority for excise duty as tax and found no error in the impugned judgment. The label-cost issue was preserved through its account and approval of the High Court result; the report contains no separate apportionment of the combined amount or independent extended label analysis (physical 5-6 and 8, paragraphs 11, 18-20).

Source: [reported judgment / paragraphs Paragraph 11 label-cost reasoning and paragraphs 14-19 / PDF pages 5, 6, 7, 8 / judicial text](#)

03 JUDICIAL DECISION

The Supreme Court upheld the deduction result and the conclusion that section 43B was not attracted to the disputed additional levy and label-cost amount on the scheme described. Civil Appeal No. 1813 of 2007 was dismissed with costs; counsel's fee was assessed at Rs. 25,000. There was no remand (physical 8/SCR 967 F-G, paragraphs 18-20).

Source: [reported judgment / paragraphs Paragraphs 18-20; SCR 967 F-G / PDF pages 8 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on the disputed deduction and section 43B applicability

Revenue's Civil Appeal 1813/2007 dismissed with costs; counsel's fee assessed at Rs. 25,000

Final substantive characterization and section 43B applicability ruling; appellate deduction result sustained

Specific permitted bottling/licence and label-cost payments only. No general deduction for statutory penalties, no immunity for all excise/licence payments, no decision relaxing actual-payment requirements once section 43B applies, and no unstated assessment year or payment date inferred.

Source: [reported judgment / paragraphs Paragraph 20: dismissal, costs, Rs. 25,000 counsel fee / PDF pages 8 / judicial text](#)

05 AKHB REVIEW POINT

Identify the legal source and substance of each demand before applying its name. Here the circular's use of penalty did not decide deductibility, and an excise authority's collection did not automatically make the amount excise duty or a statutory fee. The record included permission to use the stated exception to maturation and, separately, a cost-based explanation for labels. Preserve both heads, the combined amount and the absence of an assessment-year or payment-date finding.

Section 43B first requires an otherwise allowable deduction falling within one of its specified categories. A bounded check of the retained 2011 compilation confirms that section 43B(a) encompasses tax, duty, cess or fee under law, alongside an actual-payment rule and a return-due-date proviso. That selected later text is not proof of the precise original-year version, especially because this judgment omits the year. Distillers decides the category gateway; it does not hold that covered taxes may generally be deducted without payment or that the proviso is irrelevant.

A related later Supreme Court comparison, CIT v. McDowell & Co. Ltd. (8 May 2009), distinguishes consideration for a liquor-bottling privilege from the statutory imposts within section 43B(a). It separately rejects the proposition that furnishing a bank guarantee amounts to actual payment (first contained opinion, paragraphs 8, 10 and 16-18, physical 5-9/SCR 987-991). This is analogous later reasoning under a Rajasthan regime, not identified direct treatment of Distillers or authority to ignore the statute creating a different levy. The mixed outcomes and other issues elsewhere in the McDowell file are outside this bounded comparison.

Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain not_verified. Check the exact charging instrument, licence conditions, period and current judicial treatment before extending this historical result.

Source: [reported judgment / paragraphs Paragraphs 3-20 / PDF pages 4, 5, 6, 7, 8 / judicial text; official hosted historical statutory compilation bounded / paragraphs Selected 2011 section 43B\(a\), operative rule, proviso and bounded explanations / PDF pages 322, 323, 324 / historical statutory compilation; reported judgment bounded comparison / paragraphs First contained opinion paragraphs 8,10,16-18; SCR 987,989,991 / PDF pages 5, 7, 9 / judicial text](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 1813 of 2007

Outcome: Dismissed with costs; counsel's fee Rs. 25,000

Costs: Appeal dismissed with costs; counsel's fee assessed at Rs. 25,000

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Actual section 43B applicability and deduction decision. Karnataka excise/licence and constitutional allocation are reasoning supporting the income-tax outcome. No section 37 holding or tax/fee exemption for every licence payment is invented.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.B. Sinha, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961, section 43B; Karnataka excise law examined to characterize the disputed payments.

SPECIFIED STATUTORY CHECKS AND THEIR LIMITS

Status: bounded historical selected version

Source url: [Open cited source](#)

Pages actually read: 322; 323; 324

Finding: Section 43B(a) category wording, actual payment rule, proviso and bounded explanations checked in selected 2011 compilation.

Limit: Original AY unstated; no full section/current version, amending Gazette, complete history or 2025 mapping verified.

SPECIFIED LATER TREATMENT CHECKS AND THEIR LIMITS

1.

Case: Commissioner of Income Tax, Udaipur, Rajasthan v. McDowell & Co. Ltd.

Decision date: 2009-05-08

Relationship: later related primary comparison not direct treatment

Result: The first contained opinion distinguishes statutory imposts from contractual privilege consideration and rejects a bank guarantee as actual payment. No direct Distillers citation is relied on.

Source pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 5; 7; 9

Paragraphs: First opinion paragraphs 8, 10, 16-18

Source role: judicial text

2.

Source url: [Open cited source](#)

Pdf pages: 10

Paragraphs: Separate Civil Appeal 3511/2007, paragraph 4, confirms the tax issue result

Source role: judicial text

Limit: The source contains multiple separately headed opinions; physical 1-14 only read; no full case-group review or all-appeal disposition claim.

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Income-tax Act, 1961, section 260A (appellate route); Karnataka Excise Act, 1965; Karnataka Excise (Manufacturing and Bottling of Arrack) Rules, 1987, rule 14(3); Constitution of India, Article 265 and Seventh Schedule, List II, Entries 8 and 51; Articles 301/304 only within cited precedent quotation

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 8 PDF pages; SHA-256

2db338edf0ba919775bee638b6a5574da549690ee59e2a4183294d18d122ed2a. Original bytes preserved.

[Open cited source rendition](#)

full primary text read: True; all primary page images reviewed: False; source integrity verified: True; actual statutory scope verified: True; later treatment comprehensive: not_verified; current law status: not_verified; statutory mapping 2025: not_verified

Printed SCR identity, date and bench verified against material page images. Frozen catalogue INSC identifier is not independently authenticated in this rendition.

The report states no assessment year. The 2002 same-party kist case is a different High Court judgment from the 4 December 2003 ITA No. 313/2002 order under appeal and is not used to fill the gap.; Physical 5 quoted question (i) prints Rules 1997, whereas the Court identifies the 1987 Rules at paragraph 2. Quoted question (ii) prints section 43; the assessment and holding repeatedly concern section 43B. These source discrepancies are retained without rewriting the PDF.; The narration uses paid/paying while the Assessing Officer's objection is non-payment in the relevant period. No actual payment date or quantified split of Rs. 13,25,572 is stated.; The circular itself calls the 29 paise charge a penalty; the Court's legal classification is different. The case involved prior permission under the stated exception, not a general permission to deduct fines for unlawful conduct.; The income-tax opinion does not cite section 37 as its separately construed provision. No such numbered holding is manufactured.; McDowell 2009 is a later analogous comparison, not an identified citation of Distillers. Its multi-opinion source and separate bank-guarantee point are preserved; no all-appeals outcome is imported.; The 2011 compilation is historical selected-version evidence, not current law or an enacted Gazette.

The judgment does not state the assessment year. A separate 2002 same-party High Court kist decision surfaced in search but concerns a different order and is not used to assign an assessment year to this appeal.

Appeal from the Karnataka High Court, Bangalore, judgment dated 4 December 2003 in ITA No. 313/2002, expressly identified on physical 3/SCR 962 D. Leave granted at paragraph 1; no companion appeal listed.

STATUTORY SCOPE

No Income-tax Act, 2025 crosswalk or automatic carryover. Full amendment history, commencement, savings and case-specific present applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-05. Bounded later primary comparisons are separately recorded. None is represented as a comprehensive citator check or as direct treatment where none was identified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 8](#)

SHA-256: 2db338edf0ba919775bee638b6a5574da549690ee59e2a4183294d18d122ed2a

[reported judgment bounded comparison - PDF pages: 21](#)

SHA-256: 76f4e71a90c1db22d681da973ac986ff4f22659354c9e7cf99736ed8fcbe3542

[official hosted historical statutory compilation bounded - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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