



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Miscellaneous Appeal No. 1456/2025
CNR: RJHC020263322025 | URN: CMA / 2468U / 2025

United Spirits Limited, Situated At UB Tower, 24, Vittal Mallya
Road, Bengaluru—560001

-----Appellant

Versus

Rajasthan State Beverages Corporation Limited, Through
Executive Director And General Manager (Operation), CoERRA
Building, 5th Floor, Jhalana Institutional Area Jaipur—302004
(Rajasthan)

-----Respondent

For Appellant(s) : Mr. Vijay Choudhary
Mr. Karan Mehta
Mr. Yugam Taneja
Mr. Ram Singh Gurjar
For Respondent(s) : R. N. Mathur, Senior Adv. with
Mr. Prateek Singh

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE MANEESH SHARMA
Order**

1.	Date of conclusion of Arguments	15.07.2026
2.	Date on which the order was reserved	15.07.2026
3.	Whether the full order or only operative part is pronounced	Full
4.	Date of pronouncement	20.08.2026

REPORTABLE

Per: Maneesh Sharma,J

1. The appellant is before us challenging the judgement dated 07.03.2025 passed by the learned Commercial Court No.1, Jaipur Metropolitan-II, Jaipur, in CMNC No.38/2024, whereby the respondent's Objection Application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "A&C Act") was allowed, and the Arbitral Award dated 06.11.2023 passed in favour of the appellant was set aside while imposing a cost of Rs.40,00,000/- on the appellant.

FACTUAL MATRIX

2. The facts germane to the present matter, in brief, are as follows:



2.1. The claimant/appellant (hereinafter referred to as the 'appellant'), a company registered under the provisions of the Companies Act, 1956, is engaged in the business of manufacturing, purchasing, and selling alcoholic beverages.

2.2. The non-claimant/respondent (hereinafter referred to as the 'respondent'), a government company registered under the Companies Act, 1956, and authorised by the Government of Rajasthan to exclusively deal with Indian Made Foreign Liquor, floats a Liquor Sourcing Policy ('LSP') for manufacturers/distillers.

2.3. On 08.03.2019, the respondent floated a Liquor Sourcing Policy for the financial year 2019-2020 (hereinafter referred to as the '2019 LSP'), pursuant to which the appellant and the respondent executed an agreement under the said policy (hereinafter referred to as the '2019 Agreement').

2.4. On successful completion of the 2019 Agreement, again on 18.02.2020, the respondent floated a Liquor Sourcing Policy for the financial year 2020-2021 (hereinafter referred to as the '2020 LSP'). Thereafter, the appellant and the respondent executed an agreement dated 21.07.2020 under the said policy (hereinafter referred to as the '2020 Agreement').

2.5. The genesis of the present dispute traces back to a letter dated 12.06.2020 received by the appellant from the respondent. In the said communication, the respondent alleged that the appellant had failed to intimate the respondent department about a reduction in the customs duty levied during the preceding financial year 2019-2020 (governed by the '2019 Agreement').



2.6. The appellant responded vide a reply dated 23.06.2020, categorically refuting the allegations. The appellant stated that the respondent department was always fully aware of the applicable customs duty and that there was no deliberate concealment of any material fact by the appellant.

2.7. Despite repeated demands the verified customs duty received and paid to the customs department was not provided by the appellant.

2.8. Vide a demand notice dated 29.07.2020 issued by the respondent, the appellant was asked to deposit an amount of Rs.6,14,01,992.24/- towards the purported difference in the customs duty collected during the financial year 2019-2020. The notice further stipulated that failing such deposit, the said amount would be unilaterally deducted from the future weekly payments owed to the appellant.

2.9. Subsequently, the respondent proceeded to adjust and appropriate a sum of Rs. 10,31,55,549/- from the weekly payments payable to the appellant for the supply of liquor under the 2020 Agreement.

2.10. Consequently, the appellant initiated arbitration proceedings while invoking Clause 10 of the 2020 Agreement, by issuing a notice dated 19.10.2021.

2.11. The appellant then preferred an application under Section 11 of the A&C Act in S.B. Arbitration Application No.3/2022, and vide order dated 27.07.2022 this Court appointed the learned Arbitrator to adjudicate the dispute that arose between the parties pertaining to the 2019 Agreement and 2020 Agreement.



2.12. It is pertinent to note that only the appellant laid a claim while the respondent did not file any independent claim or counter-claim for the adjudication of its alleged dues, i.e., charging of excessive customs duty under the 2019-20 agreement.

ARBITRAL PROCEEDINGS

3. The appellant, in its statement of claim, averred that the demand raised by the respondent was unjustifiable and without legal basis. More particularly it was pleaded that:

- (a) the respondent had no power under the 2020 LSP, the 2020 Agreement, or under law to withhold payments legitimately due under the 2020 Agreement to adjust an alleged, disputed claim arising from a completely separate, prior agreement (the 2019 Agreement);
- (b) the differential customs duty claimed by the respondent does not fall within the ambit of 'Excise Revenue' as defined under Section 2(8) of the Rajasthan Excise Act, 1950. Consequently, a demand order for such recovery, i.e., Custom Duty cannot be legally raised by State Excise officials, rendering the respondent's demand bad in law;
- (c) the respondent unlawfully assumed the role of an adjudicator by unilaterally ascertaining a disputed liability. Furthermore, the respondent initiated the recovery of the alleged dues even prior to the issuance of the formal demand notice dated 29.07.2020, despite the appellant having formally disputed the claim vide communications dated 23.06.2020 and 21.08.2020;



(d) the demand pertaining to the 2019 Agreement was inherently baseless as the said agreement had been successfully completed and discharged by accord and satisfaction. The Maximum Retail Price (MRP) for the financial year 2019-20 was suo moto fixed and duly approved by the respondent on 18.04.2019 (following the Excise Commissioner's label approval on 15.04.2019). The appellant contended that the respondent possessed no authority to retrospectively revise these finalized prices

(e) the price fixation for the financial year 2019-20 caused no financial loss to the respondent. The respondent's entitlement was restricted to a 0.50% margin of the landed cost, a benefit which the respondent had undisputedly realized.

3.1. It was thus, prayed that the purported amount of Rs.10,31,55,549/- be recovered from the respondent along with pre-institution, *pendente lite* and future interest @18% per annum.

4. The respondent department then filed a statement of defence, stating that:

(a) the agreements were strictly compartmentalized by financial year. It was asserted that while an LSP is issued annually, the corresponding agreement remains valid and operational across preceding or subsequent financial years for the specific purpose of recovering outstanding dues. The respondent pleaded that since payments for goods supplied in one financial year are often disbursed in the



succeeding year, the right to recover excess or wrongful payments similarly extends to future weekly payments;

- (b) relying on Clause 1.2.1 (viii), 3.15 and 9.7 of the LSP, the respondent contended that the appellant was under a contractual obligation to produce accurate cost sheets accompanied by all relevant documents regarding the actual duties levied. It was alleged that the appellant deliberately concealed the fact that the government had reduced the customs duty on imported liquor for the financial year 2019-20, and initially failed to provide the corresponding documentary evidence;
- (c) in the absence of actual duty documents from the appellant, it had approved the 2019-20 cost sheets in a bona fide manner, operating on the basis of the cost sheets and duty rates applicable in the previous year (2018-19). It was categorically pleaded that while a cost sheet includes the basic price, supplier margin, and statutory duties, a manufacturer cannot unjustly enrich itself by claiming and retaining customs duty amounts that it never actually paid to the concerned authorities;
- (d) The respondent also raised the preliminary objection that the statement of claim was filed with significant delay and was a baseless attempt to fasten liability on the respondent corporation to avoid legitimate recoveries.

4.1. It was prayed that the claim petition of the appellant be dismissed in toto and heavy costs be imposed.





5. The learned Arbitrator, vide order dated 08.04.2023, framed the following issues for consideration:

- (i) *Whether Rs. 10,31,55,549/- are due and payable to the claimant (Appellant) by the respondent under the 2020 agreement?*
- (ii) *Whether the respondent could adjust the amount so payable as per the decision of Issue No. 1 against its claim arising out of an earlier agreement of the year 2019?*
- (iii) *Whether the difference in custom rates amounts to Rs. 8,65,05,938.24 as per the agreement of the year 2019?*
- (iv) *Whether no financial loss has been caused to the respondent and as such the respondent cannot recover the difference in custom duty?*
- (v) *Whether claimant (Appellant) is entitled to pre-institution, pendente lite and further interest on its claim No. 1?*
- (vi) *Relief?*

5.1. After examining the pleadings of the parties and examining the material available on record, the learned Arbitrator, vide Award dated 06.11.2023, allowed the appellant's claim and held that the appellant was entitled to a sum of Rs. 9,11,84,395.48 under the 2020 Agreement.

5.2. The learned Arbitrator observed that the agreements for the financial years 2019-20 and 2020-21 were distinct and unconnected, and that the 2020 Agreement contained no provision permitting the deduction, retention, or adjustment of amounts pertaining to a previous financial year.

5.3. Accordingly, the respondent's claim for an equitable set-off was held to be not maintainable. Furthermore, noting that the respondent had not suffered any financial loss, the learned Arbitrator held that no compensation could be claimed under Section 73 of the Indian Contract Act, 1872. The learned



Arbitrator also awarded costs of Rs. 10,00,000/- in favour of the appellant.

SECTION 34 PROCEEDINGS

6. Being aggrieved by the said Arbitral Award, the respondent challenged the Arbitral Award by filing an Objection Application before the learned Commercial Court under Section 34 of the A&C Act.

6.1. The respondent contended therein that the Arbitral Award was passed without application of mind and that the calculation erroneously included a sum of Rs.46,78,457.24, which pertained to various operational charges, i.e., Unloading Charges, OFS Extension Charges, TOO Charges, GST and Liquor Trade Data Charges, rather than customs duty. It was further pleaded that the learned Arbitrator failed to appreciate that the two agreements were interconnected and that the appellant had unjustly enriched itself by concealing vital information regarding the customs duty.

6.2. The appellant contested the said application, asserting that the grounds raised by the respondent were beyond the limited scope of Section 34 of the A&C Act, as they effectively sought a reappraisal of evidence and a reinterpretation of the contract. The appellant further contended that the issue regarding the deduction of Rs.46,78,457.24 was never pleaded by the respondent in its Statement of Defence, nor was any issue framed in that regard, and as such, the learned Arbitrator was not obligated to render a finding thereon.



6.3. The learned Commercial Court, vide the impugned judgment dated 07.03.2025, interfered with and set aside the Arbitral Award, holding *inter alia* that:

- (a) the findings recorded under the Arbitral Award dated 06.11.2023 were in contravention of the fundamental policy of Indian law and in conflict with the notions of morality and justice, constituting patent illegality appearing on the face of the award;
- (b) the appellant had not disputed the figure of Rs.46,78,457.24 towards various charges in the pre-arbitration communications or the Statement of Claim/Rejoinder.
- (c) the agreements for the years 2019-20 and 2020-21 were interconnected; and
- (d) the excess customs duty was recoverable under Section 72 of the Indian Contract Act, 1872.

6.4. In rendering its findings, the learned Commercial Court also made certain observations questioning the business practices of the parties, the pricing mechanisms, and the existing Liquor Sourcing Policy, and also issued various directions.

7. Aggrieved by the said impugned order dated 07.03.2025, the present appeal has been preferred.

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Learned counsel for the appellant contended that the impugned judgment is *ex facie* illegal and has been passed while acting beyond the four corners of Section 34 of the A&C Act, which



are beyond the pleadings and the evidence on record. He submitted, in particular, that:

- (a) the learned Commercial Court has committed a patent illegality by re-examining the findings/views arrived at by the learned Arbitrator, whereas it is well-established law that a court sitting in appeal under Section 34 cannot substitute its own interpretation for the view taken by the arbitrator;
- (b) the learned Commercial Court acted in manner that was patently illegal in not only by re-appreciating the evidence on record, but also by recording erroneous findings as it failed to appreciate the fact that there was no occasion for the appellant to deny the charges as the respondent never made any counter claim or allegation in this regard;
- (c) the learned Commercial Court seriously erred in delving into issues that were neither in dispute nor framed by the learned Arbitrator, thereby stepping outside the Arbitral Award, which is not permissible under the circumscribed scope of Section 34 of the A&C Act;
- (d) the learned Commercial Court exceeded its jurisdiction under Section 34 of the A&C Act, and has imposed an onerous cost of Rs.40,00,000/- without recording a finding in this regard.

8.1. In order to buttress his contentions, learned counsel for the appellant places reliance upon the judgments passed by the Hon'ble Apex Court in the matters of ***M/s Lakshmichand and***



Balchand Vs. State of Andhra Pradesh¹, Punjab State Civil Supplies Corporation Limited and Anr. Vs. Sanman Rice Mills and Ors.², Ravinder Singh Vs. Janmeja Singh and Ors.³; the judgments passed by the Delhi High Court in the matters of **Crest Education (P) Ltd. Vs. Career Launcher (I) Ltd.⁴, Oil Industry Development Board Vs. Godrej & Boyce Mfg. Co. Ltd.⁵, Steel Authority of India Ltd. Vs. Jaldhi Overseas Pte Ltd.⁶**; and a judgment passed by a Co-ordinate Bench of this Court in **Union of India through Executive Engg. Vs. Sh. S.S. Chauhan and Sons⁷**.

8.2. It was accordingly prayed that the present appeal may kindly be allowed and the impugned order dated 07.03.2025 may kindly be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

9. *Per Contra* learned counsel for the respondent while supporting the impugned order, particularly submits that:

- (a) while the scope of interference under Section 34 of the A&C Act is circumscribed, the Commercial Court is not reduced to a mere spectator, rather has to intervene when an arbitral award is unreasoned, ignores the express terms of the agreement, or is inherently flawed;
- (b) the learned Arbitrator committed a patent illegality by awarding an amount of Rs.46,78,457.24/- to the appellant

1 (1987) 1 SCC 19

2 2024 SCC OnLine SC 2632

3 (2000) 8 SCC 191

4 2023 SCC OnLine Del 3801

5 2019 : DHC : 4608

6 2021 SCC OnLine Del 2642

7 2025 SCC OnLine 6847



without assigning any reasons, thereby vitiating the Award under Section 31(3) of the A&C Act;

- (c) the aforesaid sum of Rs.46,78,457.24/- pertained to valid deductions made towards operational charges i.e., Unloading Charges, OFS Extension Charges, TOO Charges, GST and Liquor Trade Data Charges under the 2020 Agreement, rather than customs duty, which were never disputed by the appellant in the pre-arbitration correspondence;
- (d) by allowing the refund of an amount that was unequivocally payable to the respondent and was never a part of the substantive dispute referred to arbitration, the learned Arbitrator travelled well beyond the scope of reference, thus, the Arbitral Award is in conflict with the public policy of India under Section 34(2)(b)(ii) of the A&C Act;

9.1. In order to buttress his contentions he places reliance on the judgments passed by the Hon'ble Apex Court in the matter of **McDermott International Inc. Vs. Burn Standard Co. Ltd. and Ors.⁸, Batliboi Environmental Engg. Ltd. Vs. Hindustan Petroleum Corp. Ltd. and Anr.⁹, Union of India Vs. Karam Chand Thapar and Brs. (Coal Sales) Ltd. and Ors.¹⁰, M/s Lakshmichand and Balchand (Supra), Associate Builders Vs. Delhi Development Authority¹¹.**

8 (2006) 11 SCC 181

9 (2024) 2 SCC 375

10 2004 INSC 157

11 (2015) 3 SCC 49



9.2. It was prayed that the present appeal be dismissed, being devoid of any merit.

10. We have heard learned counsel for the rival parties at length and have carefully perused the material on record.

ANALYSIS AND FINDINGS

11. Limited scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996

11.1. At the outset, before considering the issue on merits it would be apt to refer the relevant provisions of Section 34, which reads as under:

"Section 34. Application for setting aside arbitral awards.

(1) *Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*

(2) *An arbitral award may be set aside by the Court only if--*

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]--

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that--





(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."





11.2. In **Associate Builders** (Supra), the Hon'ble Apex Court held that the arbitrator is the master of the evidence, that the construction of the terms of a contract is primarily a matter for the arbitrator to decide, and that a court under Section 34 does not sit in appeal over the arbitrator's award by reassessing or reappreciating the evidence.

11.3. As regards 'patent illegality' warranting interference under Section 34, the Hon'ble Apex Court in **Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India**¹², held that this ground is available only where the illegality goes to the root of the matter, and does not contemplate a mere erroneous application of law or reappraisal of evidence; it is attracted only when a finding is based on no evidence, is rendered in ignorance of vital evidence, or is one that no reasonable person could have arrived at.

11.4. As regards interpretation of the terms of a contract, the Hon'ble Apex Court in **Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.**¹³, held that mere disagreement with the arbitrator's view on facts or contractual interpretation does not permit interference under Section 34; the inquiry must be confined to whether the arbitrator's view was a possible view, and where it is found to be so, a different view cannot be substituted by the Court.

12. Limited scope of interference under Section 37 of the Arbitration and Conciliation Act, 1996

¹² (2019) 15 SCC 131

¹³ (2019) 20 SCC 1



12.1. More pertinently, since this Court is apprised of the matter under Section 37 of the Arbitration Act, it would be apt to refer to the same, which reads as under:

"Section 37. Appealable orders.

- (1) *[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:--*
 - (a) *refusing to refer the parties to arbitration under section 8;*
 - (b) *granting or refusing to grant any measure under section 9;*
 - (c) *setting aside or refusing to set aside an arbitral award under section 34.*
- (2) *Appeal shall also lie to a court from an order of the arbitral tribunal--*
 - (a) *accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*
 - (b) *granting or refusing to grant an interim measure under section 17.*
- (3) *No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."*

12.2. In the matter of **MMTC Ltd. v. Vedanta Ltd.**¹⁴, the Hon'ble Apex Court held that Section 37 does not permit a second look at the merits of the case, and that the scrutiny of a court sitting in appeal under Section 37 is confined to the correctness of the Section 34 court's exercise of its own limited jurisdiction.

12.3. Further, in **Konkan Railway Corporation Ltd. v. Chenab Bridge Project Undertaking**¹⁵, the Hon'ble Apex Court held that Section 37 does not open the door to a fresh appraisal of evidence, and that where two views are possible, an appellate court cannot interfere merely because it would have preferred the alternative view. This position was reiterated in **PSA Sical**

¹⁴ (2019) 4 SCC 163

¹⁵ (2023) 9 SCC 85





Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin¹⁶, and UHL Power Co. Ltd. v. State of Himachal Pradesh¹⁷.

13. Learned Commercial Court's findings on the provisions of the LSP, 2019 Agreement and 2020 Agreement

13.1.A perusal of the record reveals that the learned Arbitrator concluded that the 2019 Agreement and the 2020 Agreement are two independent and self-contained contracts. The learned Commercial Court, however, held that Clause 9.7 of the LSP for F.Y. 2020-21, read with Clauses 6.1, 11.1 and 13.2 of the 2020 Agreement, demonstrates such a close and continuous interconnection between the 2019 Agreement and the 2020 Agreement as to bring the transactions within the doctrine of equitable set-off, terming the Arbitral Tribunal's contrary finding "*ex facie fallacious*".

13.2.This view cannot be sustained. Clause 9.7, on its plain terms, addresses the specific and narrow contingency of unsold stock of approved brands physically lying in the respondent's depots as on the close of a financial year, pending fresh rate approval for the succeeding year; it permits continued sale of that carried-forward stock at the previously approved price until fresh rates are approved. It is, in substance, a stock-liquidation mechanism directed at physical inventory, not a general debt-recovery or price-adjustment mechanism applicable to fresh supplies made under a wholly new agreement. To read into this clause an implied licence permitting the respondent to recover, from payments due

¹⁶ (2021) 18 SCC 715

¹⁷ (2022) 4 SCC 116



for fresh supplies under the 2020 Agreement, an amount said to have been overpaid under the distinct and concluded 2019 Agreement requires an inferential leap the language of the clause does not support.

13.3. Further, moving on to Clause 6.1 of the 2020 Agreement, the same refers to recovery of "other dues", and Clause 11.1 and 11.2 of the said agreement deals with indemnity and recovery of amounts such as Inactive Stock Penalty. At their highest, permit recovery of dues arising under, or referable to, the 2020 Agreement itself, they cannot, without express words to that effect, be read as opening a channel for the recovery of a disputed claim arising under an entirely separate contractual instrument executed for an entirely separate financial year, particularly where the learned Arbitral Tribunal has found, as a fact, that no such express term exists.

13.4. It is well settled that the doctrine of equitable set-off can be invoked only where the cross-demands arise out of the same transaction, or are so closely connected as to be deemed part of a single transaction. As the 2019 Agreement and the 2020 Agreement are separate instruments born of separate annual policies, the doctrine of set-off cannot be invoked by the respondent. There is no provision within the 2020 LSP or the 2020 Agreement empowering the respondent to unilaterally withhold or adjust payments due under the current agreement to satisfy an alleged, unadjudicated claim arising from the completed 2019 Agreement.



13.5.The learned Arbitral Tribunal's finding, that the 2019 Agreement and the 2020 Agreement, though between the same parties and part of a continuing commercial relationship, were nonetheless separate and distinct transactions for the purposes of equitable set-off, in the absence of an express contractual term permitting cross-year adjustment is, at the very least, a possible and reasoned view of the contract.

13.6.The arbitral reference was strictly confined to the appellant's claim for recovery of its dues under the 2020 Agreement. The respondent raised a defence of equitable set-off but did not file an independent claim or counterclaim seeking adjudication of the alleged excess customs duty paid under the 2019 Agreement. Given the legal impermissibility of invoking a set-off across two distinct contracts without a substantive counterclaim, the learned Arbitrator rightly rejected the respondent's deductions. The learned Commercial Court erred by disregarding the distinct nature of the contracts and substituting its own view for a legally sound view of the Arbitrator to validate an impermissible cross-contractual set-off.

13.7.In any event, under Section 62 of the Indian Contract Act, 1872, once the 2019 Agreement stood concluded and a new contract, the 2020 Agreement, was executed, and the policies of the 2019 LSP and 2020 LSP were renewed, the respondent cannot go behind the 2019 Agreement to make deductions from payments owed under the 2020 Agreement for alleged breaches of the 2019 Agreement, the 2019 Agreement having stood novated.



13.8. As far as the reliance placed by learned counsel for both the parties on the judgment passed by the Hon'ble Apex Court in **Lakshmichand and Ors.** (Supra) is concerned, the same is of little help to the respondent, as in the said judgment, the Hon'ble Apex Court has held as under:

"8. In regard to the claim to adjustment on the second count the position is more controversial. The claim is founded in the doctrine of equitable set off, but we do not find evidence before us to bring the case within the operation of the doctrine. It is not a case where cross demands rise out of the same transaction or the demands are so connected in their nature and circumstances that they can be looked upon as part of one transaction. Nor can assistance be derived from Clause 71. The benefit of that provision can be claimed only if the amount sought to be retained is an ascertained sum, an amount which can be readily adjusted against the amount payable under the other contract. Here, the amount sought to be adjusted has yet to be determined as a liability against the contractor. It has been disputed by the appellant. Accordingly, Clause 71 cannot be invoked. In the result, the decision of the High Court in respect of the adjustment of Rs. 12,69,532 cannot be sustained."

13.9. As already discussed, the 2019 Agreement and the 2020 Agreement were two distinct contracts not connected to the same transaction; applying the above judgment to the present case, the respondent's claim likewise does not fall within the doctrine of equitable set-off.

14. **Learned Commercial Court's findings vis-à-vis public policy of India**

14.1. Upon a further reading of the impugned order, it is revealed that learned Commercial Court has extensively relied upon **Mafatlal Industries Ltd. v. Union of India**¹⁸ and allied authorities in the field of indirect-tax refund, together with Articles 38 and 39 of the Constitution of India, to hold that permitting the appellant to retain the amount awarded would amount to unjust

¹⁸ (1997) 5 SCC 536





enrichment at the cost of the 'public exchequer', and that the 'fundamental policy of Indian law' required that such amounts be recovered and retained by the State for public welfare.

14.2. We are of the considered opinion that the aforesaid reliance is misplaced as the same deals with an entirely different issue, i.e., fiscal legislation, statutorily regulated pricing, and the relationship between the State (as tax-collecting sovereign) and the taxpayer. The same does not bear any resemblance to the current issue at hand, as the present dispute is between two contracting commercial parties one of them, is a State-owned corporation, but contracting in its commercial and not its sovereign capacity, over the price payable under an ordinary contract of sale of goods. The findings recorded by the learned Arbitrator on factual issues and interpretation of the terms of the contract cannot be displaced by resort to constitutional directive principles or to a doctrine evolved in an altogether different field, particularly in proceedings under Section 34, which are not proceedings in the nature of a writ petition and do not permit independent constitutional adjudication *de hors* the arbitral record.

15. Learned Commercial Court findings into issues and evidence that were not a part of the Arbitral Record nor pleaded/produced by the parties to the arbitration

15.1. A careful reading of the impugned order reveals that the learned Commercial Court has traversed well beyond the pleadings, issues, and evidence placed before the Arbitral Tribunal, as well as the Section 34 application itself. The learned Commercial Court committed a glaring jurisdictional error by



placing reliance on certain "note sheets" handed over by the respondent during the final hearing, which admittedly never formed a part of the arbitral record.

15.2. Furthermore, the learned Commercial Court embarked upon an extraneous inquiry into the prevailing business practices of the financial year 2019-2020, the methodology for the fixation of the Maximum Retail Price (MRP), and extended a broader critique of the State's liquor-pricing policy across multiple financial years. The finding that a manufacturer possesses no right to determine the basic price of its own manufactured liquor is entirely alien to the arbitral pleadings of both the Statement of Claim and the Statement of Defence. The Court also suo motu questioned the terms of the Liquor Sourcing Policy (LSP), sought to dictate the contemporaneous conduct of the parties.

15.3. The jurisdiction of a court under Section 34 of the Act is strictly confined to the record of the Arbitral Tribunal. In ***State of Rajasthan v. Puri Construction Co. Ltd. and Ors.***¹⁹, the Hon'ble Supreme Court held that the Court cannot substitute its own evaluation of a conclusion of law or fact to hold that the arbitrator acted contrary to the bargain between the parties.

15.4. Further, in ***P.R. Shah, Shares and Stock Broker (P) Ltd. v. B.H.H. Securities (P) Ltd. and Ors.***²⁰, it was reiterated that an arbitral tribunal cannot make use of personal knowledge of facts of the dispute, which is not a part of the record, to decide the dispute. By extension, a Section 34 Court is similarly

19 (1994) 6 SCC 485
20 AIR 2012 SC 1866



precluded from relying on extraneous material or initiating roving inquiries outside the arbitral record.

15.5. Thus, it is a trite position of law that the jurisdiction of a Court under Section 34 of the Act is strictly confined to the record of the Arbitral Tribunal. A bare reading of the impugned order dated 07.03.2025 demonstrates a glaring jurisdictional error, wherein the learned Commercial Court placed reliance on certain "note sheets" that were handed over by the respondent during the final hearing, when these documents were never a part of the arbitral record. Such an exercise is fundamentally incompatible with the restricted scope of interference envisioned under Section 34 of the Act.

16. Substitution of view taken by the Arbitrator

16.1. The Arbitral Award dated 06.11.2023 records the Arbitrator's view that an LSP is floated every year, that the 2019 Agreement and the 2020 Agreement are separate agreements, and that neither the LSP nor either agreement contains a clause enabling the respondent to withhold the dues of the 2019 Agreement against dues under the 2020 Agreement. The learned Commercial Court took the contrary view that the two agreements were connected and that the respondent was entitled to adjust amounts across financial years by way of set-off.

16.2. In **Consolidated Construction Consortium Limited Vs. Software Technology Parks of India²¹**, the Hon'ble Apex Court held as under:

"23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides

²¹ (2025) 7 SCC 757



for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in Sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged Under Section 34 of the Act. The court exercising powers Under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings Under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement."

16.3. Where the interpretation adopted by the learned Arbitrator is a plausible one, a court exercising jurisdiction under Section 34 cannot substitute its own interpretation, even if an alternative view appears equally possible. The record shows that the learned Commercial Court proceeded as though sitting as a court of first appeal, undertaking a de novo factual and contractual re-evaluation, and by admitting fresh documents at the stage of final arguments that never formed part of the arbitral record, and founding its conclusions upon them, exceeded the jurisdiction available to it under Section 34. This constitutes a patent illegality falling outside the circumscribed scope of interference permissible under that provision.

17. In the conspectus of the legal and factual matrix discussed hereinabove, it is abundantly clear that the learned Commercial Court has exceeded the circumscribed limits of its jurisdiction under Section 34 of the Act.

18. It is a well-settled mandate of law that the appellate jurisdiction under Section 37 of the Act must be exercised to





correct the jurisdictional errors of a Section 34 Court, particularly when the court below has acted as a regular court of appeal and transgressed the boundaries of supervisory intervention.

19. As an upshot of the foregoing discussion, the impugned order dated 07.03.2025 passed by the learned Commercial Court cannot be sustained in the eyes of law and warrants interference by this Court under the powers conferred by Section 37 of the Arbitration and Conciliation Act, 1996.

20. However, from an extensive examination of the record, we are of the opinion that though under Issue No. 3 the amount of customs duty was quantified as Rs. 8,65,05,938.24/-, the learned Arbitrator committed a computational error by holding that an amount of Rs. 9,11,84,395.48/- was due and payable to the appellant towards customs duty. This is because, out of the said amount, a sum of Rs. 46,78,457.24/- was deducted by the respondent owing to operational charges, i.e., Unloading Charges, OFS Extension Charges, TOO Charges, GST, and Liquor Trade Data Charges, under the 2020 Agreement, rather than as customs duty, which could otherwise be validly adjusted under the 2020 Agreement.

21. Further, the aforesaid deduction is in consonance with the chart annexed as Annexure-R/2 along with the reply to the claim petition, which was never specifically disputed by the appellant in the rejoinder. The appellant has merely stated that the respondent has admitted to a deduction towards differential/excessively charged customs duty amounting to Rs. 8,65,05,938.24/-. Therefore, in view of the undisputed fact that a sum of Rs.





46,78,457.24/- was deducted by the respondent owing to operational charges and not towards customs duty, we are of the considered opinion that the amount of differential customs duty is Rs. 8,65,05,938.24/- only, while severing the amount of Rs. 46,78,457.24/-.

22. The Hon'ble Apex Court in ***Gayatri Balasamy Vs. M/s ISG Novasoft Technologies Ltd.***²² has held that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award to correct any clerical, computational or typographical error which appears erroneous on the face of the record.

23. Thus, in view of the computational error by the learned Arbitrator as discussed above and in terms of the directions issued by the Hon'ble Apex Court in ***Gayatri Balasamy*** (Supra), the Arbitral Award dated 06.11.2023 is hereby severed to the extent of Rs. 46,78,457.24/- deducted by the respondent owing to operational charges (i.e., Unloading Charges, OFS Extension Charges, TOO Charges, GST, and Liquor Trade Data Charges) under the 2020 Agreement, rather than as customs duty. Hence, the appellant shall be entitled to Rs. 8,65,05,938.24/- instead of the erroneous figure of Rs. 9,11,84,395.48/-.

24. Consequently, with the aforesaid directions and observations, the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996, stands disposed of. The impugned order dated 07.03.2025 passed by the learned Commercial Court is hereby set aside, and the Arbitral Award passed by the learned



Sole Arbitrator is hereby upheld and restored to the extent as observed in the foregoing paragraphs.

25. Before parting with this judgment, it is necessary to clarify that the allowing of the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is confined strictly to the adjudication of disputes arising out of the 2020 Agreement, and to no other issue.

26. The allowing of this appeal shall not be construed as an endorsement or validation, in any manner whatsoever, of the appellant's conduct in withholding the differential/excess customs duty collected.

27. The record further discloses that the respondent, by letter dated 12.06.2020, and again by letter dated 29.06.2020, called upon the appellant to furnish a comparative statement explaining the differential amount of customs duty charged. The appellant failed to furnish any such comparative statement and instead, by e-mail dated 20.07.2020, merely forwarded an OFS/dispatch-wise customs duty statement together with bills of entry reflecting the prevailing rate of customs duty.

28. It is also relevant that the respondent, along with its Statement of Defence before the learned Arbitral Tribunal, annexed a cost sheet countersigned by the appellant (Annexure R/1), the authenticity of which the appellant admitted on oath through an affidavit of admission and denial.

29. Independently of the above, the appellant, in its own memo of appeal, has set out a tabular cost sheet reflecting the customs duty charged, which itself discloses a substantial disparity



between the erstwhile rate of customs duty and the rate actually charged by the appellant.

30. Notwithstanding these facts on record, no plea of fraud was raised in the Statement of Defence, nor was any First Information Report lodged. Despite the respondent's apparent knowledge of a clear misstatement made on oath by the appellant, the matter was not brought to the notice of the competent authority, namely the Customs Department. Instead, the respondent appears to have facilitated a safe exit for the appellant by treating the matter as one of mere recovery of the differential/excess customs duty, thereby diluting the gravity of the appellant's conduct.

31. It thus appears that, despite the existence of a *prima facie* case of systematic fraud, and despite knowledge that the appellant had collected enhanced customs duty from customers without depositing the same with the Customs Department, the concerned officers of the respondent chose not to act. This raises a reasonable apprehension that certain officers of the respondent may be acting in collusion with, or with an intention to shield, the appellant. Such inaction on the part of the officials concerned warrants independent examination by the competent authorities.

32. Upon a query being put to Mr. R.N. Mathur, learned Senior Advocate appearing for the respondent, as to whether any action has been taken against the erring officials, he submitted that the department is in the process of initiating an enquiry into the matter. Taking the said submission into consideration, this Court expects that the respondent shall initiate appropriate civil,



criminal, administrative, or disciplinary proceedings against the erring officials of the respondent, strictly in accordance with law.

33. Apart from the above, as regards the excess customs duty charged by the appellant under the 2019 Agreement, which was not deposited with the Customs Department, the respondent; the Commissioner, Customs Department; the Excise Commissioner, Government of Rajasthan; the Chief Secretary, Government of Rajasthan; and the Principal Secretary, Finance, Government of Rajasthan, as well as all other competent authorities, are at liberty to initiate appropriate proceedings against the appellant, in accordance with law.

34. For the aforesaid purpose, the Registry is directed to forward a copy of this judgment to the Commissioner, Customs Department; the Excise Commissioner, Government of Rajasthan; the Chief Secretary, Government of Rajasthan; and the Principal Secretary, Finance, Government of Rajasthan.

35. As a necessary corollary, all pending stay applications and other pending application(s), if any, stand disposed of.

(MANEESH SHARMA),J

89/Seema Devi

(ARUN MONGA),J