2026:DHC:1890

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30.10.2025
Date of Decision: 27.02.2026
Judgment uploaded on*: 02.03.2026*

\+ C.O. (COMM.IPD-TM) 131/2025 & I.A. 13752/2025

RADICO KHAITAN LTD. .....Petitioner
Through: Mr. Rajshekhar Rao, Sr. Adv., Mr. Anirudh Bakhru, Ms. Ishani Chandra, sMr. Sagar Chandra, Ms. Srijan Uppal, Mr. Abhishek Bhati, Mr. Subhadeep Das and Mr. Ajay Sabharwal, Advs.

versus

MOHIT PETROCHEMICAL PVT. LTD. & ANR. .....Respondents
Through: Mr. Sudeep Chatterjee, Mr. Rohan Swarup, Mr. Rajit Ghosh and Ms. Aastha Verma, Advs. for R-1.
Ms. Nidhi Raman, CGSC, Mr. Arnav Mittal, Mr. Mayank Sansanwal and Mr. Om Ram, Advs. for R-2.

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present petition has been filed for the removal of the entry made in the Register of Trade Marks in respect of Registration No. 4832282 for the Trademark "GRAND MASTI" in Class 33 under Sections 57 of the Trade Marks Act, 1999 ('Act of 1999').

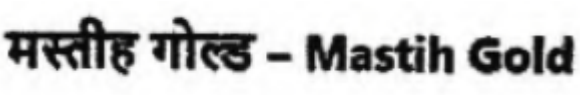
Case set up the Petitioner:

2. The Petitioner is one of India's leading liquor manufacturing and marketing companies, established in the year 1943, and has acquired substantial reputation and goodwill in the alcoholic beverages industry.

2.1. The Petitioner adopted the house/trademark "RADICO" in the year 1992 and has since launched and marketed several reputed brands under the said house mark, including **MASTIH**, WINDIES, NAGINA, WINDIES GOLD, UDAN, JHOOM, 8 PM, MAGIC MOMENTS, amongst others.

2.2. The Petitioner adopted the trade mark MASTIH in the year 1969. It adopted this mark in Hindi Transliteration in Devanagari script **मस्तीह्** in the year 1992 and has since been using the same extensively and continuously.

2.3. The Petitioner is the registered proprietor of the label mark, MASTIH DESI MASALEDAAR SHARAB/— 

, wordmark **MASTIH GOLD**, and device mark 

in Class 33 for Alcoholic Beverages/Country Liquor ('Petitioner's trademarks'). The details of the said registrations are set out in paragraph 17 of the petition. This is a Petitioner's flagship brand.

2.4. The said marks are prominently displayed in bold lettering on the Petitioner's packaging along with the house mark RADICO.

2.5. The Respondent has challenged Petitioner's registration for the wordmark MASTIH GOLD bearing TM No. 992738 in C.O. (COMM.IPD-TM) 254/2025. In the said petition at the hearing dated 17.12.2025, Petitioner made a statement that it is not relying on the said registration for

the challenge to the Respondent's registration for the mark GRAND MASTI in this captioned petition.

Overview of the dispute:

2.6. In or around October 2021, the Petitioner became aware of Respondent No. 1's goods, falling within the same class as that of the Petitioner, bearing the mark ग्रैंड मस्ती ('Impugned Mark') and a label ('Impugned Label-1'), which was deceptively similar to the Petitioner's trademarks and label. The Respondent No. 1 uses the mark in the Devanagari script on the goods though the registration is in English for GRAND MASTI.

Consequently, the Petitioner filed an objection letter dated 30.10.2021 before the Office of the Commissioner of State Excise, Prayagraj, Uttar Pradesh, objecting to the use of the said Impugned Mark and Impugned Label-1[1].

2.7. While the said proceedings before the Commissioner were pending, the Petitioner in September 2022 came across the other variants of Respondent's Impugned Labels bearing the mark ग्रैंड मस्ती, being Impugned Label-2[2] and Impugned Label-3[3], which as well were deceptively similar to the Petitioner's trademarks.

2.8. The Petitioner issued a cease-and-desist notice dated 08.09.2022 to Respondent No. 1.

2.9. Respondent No. 1 replied to the aforesaid notice vide reply dated 28.09.2022, wherein it denied the allegations of infringement and refused to comply with the demands raised by the Petitioner.

[1] Annexed as ANNEXURE-A along with this judgment
[2] Annexed as ANNEXURE-B along with this judgment

2.10. Thereafter, a series of communications were exchanged between the Petitioner and Respondent No. 1 to arrive at a settlement. Pursuant thereto, and purely as an interim arrangement, the Petitioner, without prejudice to its rights and contentions, and in consonance with Respondent No. 1's own undertaking before the Excise Commissioner issued a No Objection Certificate (NOC)[4] dated 10.07.2023. By way of the said NOC, the Petitioner permitted Respondent No. 1 to use an alternate label, namely Impugned Label-4[5], solely for the limited purpose of disposal of existing stock for the remaining financial year. The size of the words ग्रैंड मस्ती was specifically approved so as to ensure that the word ग्रैंड appears prominently. The said indulgence was extended by the Petitioner for the said financial year only, considering the subsisting commercial relationship with the Respondent No.1, who had been bottling the Petitioner's brands 'Windies' and 'Nagina' and was not intended to confer any permanent or proprietary rights upon Respondent No. 1. The said NOC expired at the end of the year.

[3] Annexed as ANNEXURE-B along with this judgment
[4] Annexed as Document no. 17 [Petitioner's documents]

2.11. It is stated that in or about June 2024, the Petitioner again came across the impugned goods of Respondent No. 1 bearing yet another distinct label, namely Impugned Label–5[6], which was deceptively similar. Consequently, the Petitioner issued another cease-and-desist notice dated 17.06.2024, calling upon Respondent No. 1 to desist from the alleged infringing activities.

2.12. Prior to issuing its reply, Respondent No. 1 served a caveat dated 26.06.2024 upon the Petitioner, indicating its intention to contest any legal proceedings. Subsequently, vide reply dated 28.06.2024, Respondent No. 1 denied the allegations and declined to comply with the notice, contending inter alia that the earlier NOC was issued pursuant to a settlement and that no dispute subsisted in respect of the impugned mark ग्रैंड मस्ती.

2.13. It is stated that the Petitioner again in around May 2025 came across the *present* variant of the impugned goods referred to as Impugned Label-6, bearing the nearly identical impugned mark ग्रैंड मस्ती.

2.14. It is stated that in the present Impugned Label-6, the prominent and essential feature is **मस्ती/MASTI**, whereas the prefix **ग्रैंड/GRAND** is written in a significantly smaller font. The intent of the Respondent No. 1 is therefore to treat **मस्ती/MASTI** as the dominant feature of the mark. The Impugned Label-6 is deceptively similar to the Petitioner's trademarks. The said Impugned Label-6/present variant has been reproduced as under:

[5] Annexed as Annexure C
[6] Annexed as ANNEXURE-D along with this judgment

Impugned Label bearing Impugned Mark 'ग्रैंड मस्ती/GRAND MASTI'

2.15. The Petitioner contends that a prior contractual relationship existed between the parties, during which the Respondent acquired full knowledge of the Petitioner's goods sold under the trademarks मस्तीह्/MASTIH, its goodwill, and sales figures, which stood at INR 1,293.47 crores in 2020-2021 and increased to INR 1,552.17 crores in 2021-2022. Despite such knowledge, the Respondent proceeded to adopt and launch goods under a similar name, in violation of the Petitioner's proprietary rights.

2.16. Aggrieved by the continued use of the Impugned Label-6, the Petitioner filed a further objection letter dated 20.05.2025 before the Commissioner of State Excise, Lucknow, Uttar Pradesh, objecting to the approval and use of the Impugned Label-6 by Respondent No. 1. Thereafter, the present rectification petition was filed on 23.05.2025.

SUBMISSIONS BY THE PETITIONER:

2.17. It is submitted that the Petitioner is a prior adopter of the mark मस्तीह्/MASTIH, and has been using the same in Devanagari script since

1992, whereas the Respondent No. 1 adopted the mark only in 2021 and filed for the registration of its mark GRAND MASTI on 23.01.2021 under Class 33 on a proposed-to-be-used basis. It uses the mark in Devanagari script ग्रैंड मस्ती on its goods.

3. The impugned mark ग्रैंड मस्ती/GRAND MASTI is deceptively similar to the Petitioner's mark मस्तीह्/MASTIH as it wholly incorporates the dominant and essential feature MASTIH. The mere addition of the laudatory prefix 'GRAND' does not distinguish the impugned mark and instead creates the false impression of a brand extension of the Petitioner's mark. It is well settled that laudatory epithets are insufficient to avoid trade mark infringement. Reliance is being placed upon the judgment **Ram Rakhpal v Amrit Dhara Pharmacy**[7] and **Amritdhara Pharmacy v Satya Deo Gupta**[8]**.**

4. It is submitted that the labelling guidelines by the State Excise Department, Uttar Pradesh, for Country Liquor mandates a green border and white background, which both Petitioner and Respondent No. 1's goods follow. The use of the nearly identical mark ग्रैंड मस्ती/GRAND MASTI in addition to the uniform trade dress significantly increases the likelihood of confusion amongst the consumers.

5. Further, consumers of alcoholic beverages in this lower price segment are non-discerning and price-sensitive. In such circumstances, the use of the mark ग्रैंड मस्ती/GRAND MASTI with respect to the Alcohol beverages/country liquor being sold in the same shops and to the same class of customers, is likely to cause confusion and deception in the minds of

[7] 1956 SCC OnLine All 385 [Paragraph Nos. 32-34 and 97]

consumers of average intelligence and imperfect recollection, thereby resulting in a clear likelihood of confusion. Reliance has been placed on the judgment **Mohan Meakin Limited v A.B. Sugar Limited**[9] and **Allied Blenders & Distillers Pvt Ltd. v. Shree Nath Heritage Liquor Pvt Ltd.**[10]

6. It is submitted that the prominent part of the impugned mark is **MASTI** and the Respondent No.1 is also using the Hindi transliteration of the Impugned Mark on its Impugned Goods packaging.

7. It is stated that the Respondent No. 1 has taken inconsistent positions. While it contends that the expression MASTI is a common word not capable of exclusive registration, it has itself applied for registration of the mark GRAND MASTI, thereby seeking proprietary rights over the same expression. Such inconsistent conduct amounts to approbation and reprobation and cannot be permitted in law.

8. It is submitted that the mere fact that the excise authorities have granted a license[11] to Respondent no.1 to market its goods under the impugned mark would not in any manner impinge upon the legal rights of the Petitioner to maintain this petition. The examination of a label by the authorities under the Excise Act is for a purpose different from that prescribed under the Act of 1999 for the Registrar of Trade Marks. Reliance has been placed upon the judgment passed by the Co-ordinate Bench in **Radico Khaitan Limited v. Brima Sagar Maharashtra Distilleries Ltd**[12]**.**

9. It is respectfully submitted that the allegations of waiver, estoppel, delay, acquiescence, or prior consent raised by Respondent No. 1 are wholly

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[8] 1962 SCC OnLine SC 13 [Paragraph No. 8]
[9] 2013 SCC OnLine Del 4120 [Paragraph No. 11]
[10] 2014 SCC OnLine Del 3412 [Paragraph Nos. 14-20]
[11] Annexed as Document No.6 [Respondent's documents]
[12] 2014 SCC OnLine Del 2036 [Paragraph No.117]

misconceived. The Petitioner has consistently opposed the mala fide adoption and use of the impugned mark ग्रैंड मस्ती/GRAND MASTI at all material times. Respondent No. 1 was repeatedly placed on notice of the Petitioner's statutory and common law rights in the mark मस्तीह्/MASTIH through an objection letter dated 30.10.2021, cease-and-desist notice(s) dated 08.09.2022 and 17.06.2024, an objection dated 20.05.2025 before the Commissioner of Excise, and the present rectification proceedings.

10. Further, it is submitted that the NOC dated 10.07.2023 was issued strictly 'without prejudice', solely to permit disposal of existing stock for the said calendar year under a limited interim arrangement arising from the parties' commercial bottling relationship, and applied only to Impugned Label-4; it neither concerned nor authorised to the use of the impugned mark ग्रैंड मस्ती/GRAND MASTI**.**

In law, a without-prejudice communication does not amount to waiver or acquiescence; consequently, the said NOC cannot be construed as consent or abandonment of the Petitioner's rights in मस्तीह्/MASTIH, nor as approval of the impugned mark. Reliance has been placed on the judgment passed by the Supreme Court in **NTPC Ltd. v. Reshmi Constructions, Builders & Contractors**[13]**.**

SUBMISSION BY THE RESPONDENT

11. It is submitted that under the Uttar Pradesh Excise Policy 2025–26, a valid trade mark registration is mandatory for liquor licensing. Respondent No. 1's trademark registration for **GRAND MASTI** is a regulatory requirement essential for lawful business operations. The rectification

[13](2004) 2 SCC 663 [Paragraph No. 35]

petition is a mala fide and anti-competitive attempt to cancel a mark critical for compliance, which would jeopardise an established business and undermine fairness and stability under the Act of 1999.

12. It is submitted that the manufacture and sale of country-made liquor in Uttar Pradesh is strictly regulated by annual norms issued by the Excise Commissioner. Under the Circular dated 06.02.2025[14], manufacturers must follow uniform packaging requirements, including a white background, green border, and prescribed mandatory disclosures. Respondent No. 1's goods bearing the mark ग्रैंड मस्ती/GRAND MASTI fully comply with these statutory norms. Any similarity in packaging arises solely from mandatory regulatory requirements and not from ornamental use or bad faith adoption by Respondent No. 1.

13. It is submitted that the NOC dated 10.07.2023 issued by the Petitioner was clear, unconditional, and contained no reservation, disclaimer, or limitation. Its intent must be ascertained from its plain terms and not from subsequent assertions made by the Petitioner in these proceedings. Having voluntarily granted consent, the Petitioner is estopped from resiling therefrom, as the doctrine of approbate and reprobate bars a contradictory stance. The NOC constitutes a binding agreement between the parties, which cannot be unilaterally withdrawn. Respondent No. 1 relied on this consent to invest resources, build goodwill, and operate lawfully. The Petitioner's silence and inaction amount to waiver and tacit approval, entitling Respondent No. 1 to continue use of its registered mark, as recognised in **Chairman, State Bank of India v. M.J. James[15].**

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[14] Order No. 09/2025/255 E-2/Thirteen-2025-01/2025/1888979
[15] (2022) 2 SCC 301

14. It is submitted that the Petitioner had knowledge of Respondent No. 1's use of the mark "GRAND MASTI" since October 2021 but remained inactive until September 2022 and thereafter issued an unconditional NOC on 10.07.2023. The petition filed in mid-2025 reflects an unexplained delay of nearly four (4) years, amounting to waiver. During this period, Respondent No. 1 made substantial investments and goodwill, with sales rising from INR 9.43 crore to INR 41.61 crore. Reliance has been placed on the judgments passed by the Co-ordinate Bench in **Hindustan Pencils v. India Stationery**[16] and **Rhizome Distilleries v. Pernod Ricard**[17]**,** in which it was held that even a few years' delay, especially where the defendant's commercial presence has expanded with the plaintiff's knowledge, can defeat the claims for interim relief.

15. It is submitted that the Petitioner holds registration only for a composite label mark '**MASTIH DESI MASALEDAAR SHARAB**' along with other elements, and for **MASTIH GOLD** as a device mark. Petitioner has no standalone registration for **MASTIH** or **MASTI** and cannot claim a monopoly over the common dictionary word **MASTI.**

It is further submitted that Respondent No. 1's mark 'GRAND MASTI' must be assessed as a whole in accordance with the settled anti-dissection principle, as reiterated in **Parle Products v. J.P. & Co**[18]**. and Amritdhara Pharmacy v. Satyadeo Gupta (supra**), which prohibit comparison of isolated elements of composite marks.

16. It is submitted that the disputes concerning similarity of liquor labels fall exclusively within the jurisdiction of the Excise Commissioner under

[16] AIR 1990 Delhi 19
[17] 2009 SCC OnLine Del 3361
[18] AIR 1972 SC 1359

Clause 5.13.1(b) of the Uttar Pradesh Excise Policy 2025–26. Despite repeated objections by the Petitioner, the Excise Commissioner has not found any similarity. Via bypassing this competent authority and approaching this Court after failed attempts, the Petitioner has indulged in forum shopping, acknowledging the Excise Commissioner as the appropriate forum.

17. It is submitted that the consumers in the alcoholic beverage industry develop strong brand loyalty through repeated purchases, driven primarily by taste, quality, price, and overall experience rather than packaging or advertising. The term 'मस्ती/MASTI' is widely used by multiple registered trademarks in Class 33, demonstrating that it is common to the trade and not exclusive to any single entity. Given statutory restrictions on liquor advertising in India, consumers rely on product-specific attributes to distinguish brands, as seen with marks such as **MASTIH** and **GRAND MASTI.** In this regard, the reliance is placed on the judgments in **Pernod Ricard India Pvt. Ltd. v. Karanveer Singh Chhabra**[19] and **Khoday Distilleries Ltd. v. Scotch Whisky Association**[20].

COURT'S ANALYSIS

18. This Court has heard the learned counsel for the parties and perused the record.

19. The Respondent has broadly raised three principal defences. First, it is asserted that the rival marks are not deceptively similar. Second, it is urged that the petitioner does not have any standalone registration for the word मस्तीह्/MASTIH or मस्ती/MASTI and therefore the rival marks have to be

[19] 2025 SCC OnLine SC 1701
[20] 2008 SCC OnLine SC 975

compared as a whole and the petitioner cannot be permitted to dissect the marks. Third, reliance is placed on the NOC dated 10.07.2023 issued by the petitioner in proceedings before the Excise Commissioner under the Uttar Pradesh Excise Policy during the Financial Year 2023-24, contending that the said NOC amounts to consent by the Petitioner to the Respondent's use of the impugned mark ग्रैंड मस्ती/GRAND MASTI and that the Petitioner's claim is barred by waiver and estoppel.

20. This Court shall now proceed to examine the Respondent's first submission relating to the alleged absence of deceptive similarity between the rival marks.

21. The petitioner is the registered proprietor of the label mark मस्तीह् देसी मसालेदार शराब/MASTIH DESI MASALEDAAR SHARAAB held vide TM No. 566892 and device mark मस्तीह् गोल्ड-Mastih Gold held vide TM No. 6338157, both under Class 33.

22. The TM No. 566892 records user detail of the mark since 01.07.1969 and therefore substantiates the submission of the petitioner that it adopted the word MASTIH as a part of its trademark in the year 1969. The petitioner's contention that it adopted MASTIH in Devanagari script मस्तीह् in 1992 is duly borne out from TM No. 566892, as the application was made on 04.02.1992.

23. The Petitioner has placed on record its sales figures for the period 2003-2025 for the goods sold under the mark constituting the word 'MASTIH/ मस्तीह्, thereby evidencing continuous use.

Also, as pleaded[21], the sales turnover of the Petitioner's goods sold

[21] Paragraph 22 of the petition

under the mark मस्तीह्/MASTIH was INR 1,293.47 crores during the financial year 2020-21 and INR 1,552.17 crores during the financial year 2021-22, which is the *relevant period* when the Respondent No. 1 adopted the impugned mark**.** The Petitioner's sales in the following years stood at INR 1670.13 crores in 2024-25. The Petitioner has filed its Chartered Accountant certificate dated 19.05.2025 in support of these figures. In its reply, Respondent no. 1 has not disputed the sales figures.

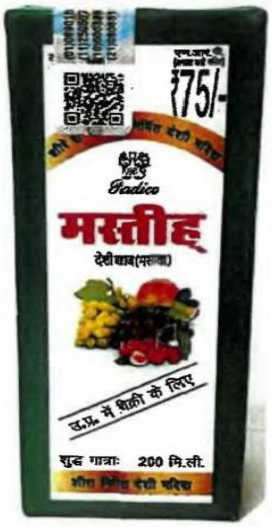
The said sales figures evidence the reputation and goodwill of the petitioner's goods in the market.

24. The Respondent, is/was admittedly a bottler of the petitioner for its other alcoholic brands Windies and Nagina and thus, has a commercial relationship with the petitioner. The Respondent no. 1 independently also has its own alcohol beverages as enlisted in paragraph 75 of its reply and is therefore a regular market player in this field. Thus, as a matter-of-fact Respondent no. 1 is completely aware of the petitioner's goods sold under the marks incorporating the word मस्तीह्/MASTIH and the goodwill and reputation of the petitioner's marks and goods. With such knowledge, the Respondent no. 1 consciously adopted the impugned mark ग्रैंड मस्ती/GRAND MASTI in the year 2021 and applied for its registration on 23.01.2021 under identical Class 33 on a proposed-to-be-used basis.

25. In the aforenoted facts, the petitioner is certainly the prior adopter of the word मस्तीह्/MASTIH as a part of its trademark, between these parties.

26. The Petitioner is presently marketing its goods under two (2) distinct marks मस्तीह् देसी शराब (मसाला)/MASTIH DESI SHARAAB (MASALA) and मस्तीह् गोल्ड/MASTIH GOLD, each incorporating the word मस्तीह्

/MASTIH in the Hindi language. A perusal of the present use of the Petitioner's marks as seen on the goods shows that the word मस्तीह् /MASTIH constitutes the dominant, distinctive, and source-identifying element of the marks. The Petitioner's marks, as used in trade, are reproduced hereunder:

'मस्तीह/MASTIH' 36% v/v Country Liquor	मस्तीह् गोल्ड /MASTIH GOLD UPML
	

The rival marks of the Petitioner and Respondent as it appears on the rival goods are reproduced hereunder. In this comparison, Petitioner's mark मस्तीह् देसी शराब (मसाला)/MASTIH DESI SHARAAB (MASALA) as used on its goods and Respondent no. 1's mark ग्रैंड मस्ती/GRAND MASTI as per Impugned Label-6 is reproduced hereunder:

Petitioner's Product 'मस्तीह्/ MASTIH'	Respondent No.1's Impugned Product 'ग्रैंड मस्ती/GRAND MASTI'
	

As is apparent, the parties are using their respective marks in relation to identical goods, namely, country liquor sold in tetra packs, catering to the same trade channels and the same class of consumers.

27. A perusal of Respondent's Impugned Label-6 reveals that on the packaging the word ग्रैंड/GRAND in comparison with the word मस्ती/MASTI has been depicted in a comparatively smaller font, thereby directing the consumer's attention predominantly towards the word मस्ती/MASTI, which clearly emerges as the dominant and prominent element of the Respondent no. 1's mark.

Similarly, in the Petitioner's goods as well the word मस्तीह्/MASTIH is the dominant element of the mark मस्तीह् देसी शराब (मसाला)/MASTIH DESI SHARAAB (MASALA).

Upon review of the aforesaid packaged products, it is evident that the clear intent of the seller/manufacturer is to have the customer to recall/identify the trademark of the goods as मस्तीह्/MASTIH, by the

Petitioner and मस्ती/MASTI, by the Respondent no. 1, respectively. The phonetic similarity of the words मस्तीह्/MASTIH and मस्ती/MASTI is not disputed. The use of the Devnagari script by both the parties on the packaging of the dominant feature has made the phonetic pronunciation identical.

28. There is no doubt in the mind of this Court that to the class of consumers of these goods i.e., country liquor in tetra-pack, which is sold in uniform packaging, the *fine* difference in the spelling of मस्ती/MASTI and मस्तीह्/MASTIH will be indistinguishable lost on both the consumer as well as the retailer. Moreover, the fact that both competing goods are priced identically at Rs. 75, will also enhance the likelihood of consumer confusion due to the rival marks, who is unlikely to question the origin/manufacturer being satisfied with the price of the Respondent no. 1's goods.

29. It is an admitted position that all manufacturers/sellers are required to adhere to a uniform packaging regime under the Uttar Pradesh Excise Policy, presently white background and green border, and to that extent, there is similarity in the overall trade dress of the tetra packs owing to statutory compliance. The element of fruits in petitioner's packaging on one hand and tumblers on the Respondent no. 1's packaging on the other hand, is a negligible difference and is unlikely to serve as a distinguishing factor so as to alert the customer to think that these goods are from different manufacturers, especially since, these goods are not sold in departmental stores where a consumer selects them (with some deliberation) from the shelves. These products are sold in government authorised liquor stores where the same are handed over to the consumer across the counter on demand by reference to the trademark/trade name. In this method of sale, the

phonetic pronunciation of the trademark as recollected by the consumer assumes material significance and the phonetic similarity of the rival trademarks is bound to give rise to a substantial confusion between the consumer and the retailer, giving unfair advantage to the Respondent's products.

30. It is also apposite to refer to the decision of the Coordinate Bench in **Mohan Meakin Limited (supra),** which squarely governs the controversy at hand. In the said judgment, the Court held that, in respect of alcoholic beverages positioned in the lower price segment, the class of purchasers is generally not highly discerning, which correspondingly increases the likelihood of confusion amongst the consuming public. The Coordinate Bench further observed that, in such cases, the absence of visual similarity is of limited relevance where phonetic similarity exists, as consumers are more likely to identify and purchase the goods on the basis of phonetic impression.

31. The Coordinate Bench of this Court in **Ram Rakhpal v. Amrit Dhara Pharmacy (supra)**[22] has held that certain categories of words, particularly those which are merely laudatory or which form part of the common stock of the English language are inherently incapable of acquiring distinctiveness and, consequently, are required to remain open for public use and are not amenable to exclusive appropriation or registration.

In the present case, in the Court's considered opinion, the mere addition and use of the word ग्रैंड/GRAND by the Respondent for the creation of the impugned mark ग्रैंड मस्ती/GRAND MASTI does not materially distinguish the Respondent's mark so as to negate confusion as

the Respondent itself lays emphasis on the word मस्ती/MASTI. On the contrary, such use is likely to create a false and misleading impression of a brand extension or association with the petitioner's MASTIH goods, thereby aggravating the likelihood of confusion.

32. Applying the aforesaid principles to the facts of the present case, this Court is of the considered opinion that the Petitioner's mark and the Respondent's mark are phonetically similar, resulting in a real, substantial, and tangible likelihood of confusion. Having regard to the overall impression conveyed by the rival marks, this Court is further satisfied that the Respondent's mark ग्रैंड मस्ती/GRAND MASTI is deceptively similar to the Petitioner's marks, and is likely to mislead or confuse an unwary consumer as to the source, affiliation, or trade connection of the goods.

33. In these facts, in the considered opinion of this Court, the Respondent's adoption of the mark GRAND MASTI in respect of identical goods cannot be regarded as bona fide. The petitioner is certainly the prior adopter of its trademarks comprising of the dominant element मस्तीह्/MASTIH and Respondent no. 1's adoption is a clear attempt to ride on the reputation and goodwill of the Petitioner's marks and cause confusion on the part of the public.

34. With respect to the Respondent's second contention that the Petitioner does not have any standalone registration of the word मस्तीह्/MASTIH, it would be apposite to refer to the judgment of the Division Bench in **WOW MOMO Foods Private Limited v. WOW Burger & Anr.**[23], wherein it has

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[22] Paragraph nos. 32-34 and 94
[23] 2025:DHC:9320-DB

been elucidated that even in the absence of registration of the dominant element of the mark, which, in the present case, would be मस्तीह्/MASTIH, the proprietor is nevertheless entitled to protection where the Respondent/rival mark is found to be deceptively or confusingly similar to the petitioner's mark. The relevant paragraph of the judgment is as follows:

> "43. The learned Single Judge has also observed that the appellant has no registration for the mark WOW or WOW! This aspect is also irrelevant. Under Section 17(2)(a)(ii), the absence of any trademark registration in favour of the appellant, for WOW as a standalone mark, can only disentitle the appellant from claiming exclusivity over WOW as a standalone mark. The proscription against any claim to exclusivity, where the composite mark contains any part which is not separately registered as a trade mark, is "in the matter forming only a part of the whole of the trade mark so registered". The absence of any registration, in favour of the appellant, for WOW, therefore, would disentitle the appellant only from claiming exclusivity over WOW as a standalone mark. The absence of any registration, held by the appellant, for WOW does not, in any manner, erode the appellant's claim of exclusivity over the mark WOW MOMO or impact its entitlement to relief against infringement by any other person, by use of a mark which is confusingly or deceptively similar to WOW MOMO, such as WOW BURGER."
>
> (Emphasis Supplied)

35. The Respondent has contended that the Petitioner has no standalone registration for the mark मस्ती/MASTI or मस्तीह्/MASTIH, and since this is an ordinary dictionary word, it cannot be monopolised by the Petitioner.

The Petitioner has placed on record documents evidencing its long and continuous use of its mark, evidencing its reputation and goodwill in its marks मस्तीह् देसी मसालेदार शराब/MASTIH DESI MASALEDAAR SHARAAB, मस्तीह् देसी शराब (मसाला)/MASTIH DESI SHARAAB

(MASALA) and मस्तीह् गोल्ड-Mastih Gold wherein the word मस्तीह्/MASTIH is the dominant element.

The Respondent's adoption of the impugned mark, which on the packaging bears a striking resemblance to the Petitioner's marks in respect of an identically priced product and where the dominant element of the mark is phonetically similar, is evidently calculated to mislead consumers into believing that the Respondent's goods originate from, or are associated with, the Petitioner. Notably, the Respondent has itself acknowledged in its pleadings and written submissions that in the alcoholic beverages trade, consumer loyalty is predominantly influenced by taste and *price*. In such circumstances, the likelihood of confusion is significantly amplified. Consequently, the Petitioner faces a serious risk of erosion of goodwill and reputation, as consumers, misled by the deceptive similarity, may purchase the Respondent's products under the mistaken impression that they are those of the Petitioner.

36. The Respondent contends that the Respondent no. 1's mark ग्रैंड मस्ती/GRAND MASTI cannot be artificially dissected to isolate the element मस्ती/MASTI, and compared with the Petitioner's marks instead, it must be assessed in its composite form, which conveys a distinct overall impression and reduces any likelihood of confusion amongst the consumers.

37. The aforesaid submission advanced by the Respondent is wholly untenable. A bare perusal of Impugned Label Nos. 1 to 6 (adopted by the Respondent between 2021 to 2025) clearly demonstrates that, in its own packaging, the Respondent has prominently emphasised the word मस्ती/MASTI while using the impugned mark. By consciously highlighting

and foregrounding this expression on the packaging, the Respondent has itself rendered मस्ती/MASTI the dominant and distinguishing feature of the impugned mark. In this regard, it is apposite to place reliance on a judgment passed by the Division Bench of this Court in the judgment of **M/s. South India Beverages Pvt Ltd v. General Mills Marketing Inc & Anr**[24] wherein while deliberating on the rule of '*anti-dissection*' and identification of the dominant feature the Court observed that the step of identifying the dominant element of a mark is not in violation of anti-dissection principle, rather it is a preliminary step on the way to an ultimate determination of the confusion amongst the consumers.

The dominant feature test was also applied by the Division Bench in the recent judgment of **WOW MOMO Foods Private Limited v. WOW Burger** (supra)[25].

38. In the facts of the present case, this Court is of the considered view that the Respondent has with the awareness of the goodwill of the Petitioner's marks, in bad faith adopted the dominant and essential feature of the Petitioner's mark मस्तीह्/MASTIH and merely prefixed the laudatory expression GRAND to formulate the impugned mark. The changing size of the font of GRAND vis-à-vis MASTI in the packaging of impugned label 1 to 6, shows that the said laudatory word has been included by the Respondent only to enable it to raise a legal defence of distinction. Such adoption by the Respondent, when the marks are compared as a whole, results in a mark that is deceptively similar and is likely to cause confusion and deception among consumers of average intelligence and imperfect

[24] (2015) 61 PTC 231, paras 20, 21 and 37
[25] At paras 46 and 47

recollection.

Extensive third-party use of the common word 'MASTI'

39. The Respondent has contended that the word मस्ती/MASTI/MASTIH/ मस्तीह् is not exclusive to any single entity, including the Petitioner, but rather is commonly used by several entities in this trade. The Respondent has enlisted the other third-party marks for identical goods at paragraph 59 of its reply, which use the term मस्ती/MASTI as a part of their mark. It therefore contends that in these facts, the Petitioner cannot claim exclusive proprietary rights in the word मस्तीह्/MASTIH.

This Court finds no merit in this submission. The Respondent herein has obtained registration for the impugned mark ग्रैंड मस्ती/GRAND MASTI on the premise that it is distinctive. The Respondent therefore acknowledges that the term ग्रैंड मस्ती/GRAND MASTI is capable of distinguishing its goods from its rivals. Pertinently, in its written submission under para VI (first bullet point) concedes that the term MASTI is a prominent element of its trademark. It is settled law, a registered proprietor cannot, while defending an action for infringement or passing off, contend that the very mark in which it claims statutory rights is common to trade, as such a plea is inconsistent with the assertion of exclusivity inherent in registration.

40. Moreover, the Respondent has failed to prove that the other parties using the word मस्ती/MASTI have significant business turnover or they posed a threat to Petitioner's goodwill. It is equally well settled that the proprietor is not obliged to initiate proceedings against every minor or insignificant infringer. As recognised in **Pankaj Goel v Dabur India**[26] and

[26] 2008 SCC OnLine Del 1744 at paragraph nos. 21 and 22

Assam Roofing Ltd. & Anr. v JSB Cement LLP & Anr[27]**,** selective enforcement of trademark rights does not dilute the proprietor's entitlement to seek relief against a substantial and deceptive infringement. It is the prerogative of the registered proprietor of a mark who to sue to protect its rights.

41. This leads the Court to the third contention concerning the effect of NOC dated 10.07.2023 issued by the Petitioner in favour of Respondent no. 1 before the Excise Commissioner, U.P for the financial year 2023-24. The Respondent no. 1 has contended that issuance of the NOC constitutes waiver and estoppel. The Petitioner, on the other hand, has submitted that the NOC was issued with the clear disclaimer 'without prejudice' and therefore cannot constitute a waiver or estoppel. The Petitioner contends that the consent for use of Impugned Label no. 4 for 2023-24 was given to enable Respondent no. 1 to exhaust its stock, so as to mitigate the losses of Respondent no. 1 and this gesture was made keeping in view the commercial relationship between the parties.

42. The Respondent has relied upon the judgment of **Chairman, State Bank of India** (supra) to contend that in view of the NOC, the Petitioner is stopped from maintaining this petition. The aforesaid judgment arose under Arbitration Act, 1940 and pertained to a No Demand certificate issued by the contractor with an endorsement of 'without prejudice'. The employer was relying on the No Demand certificate to contend that the contractor cannot maintain the arbitration proceedings. The Court however rejected the argument of the employer and held that the arbitration agreement survived despite issuance of the No Demand certificate due to the endorsement of

[27] 2015 SCC OnLine Cal 6581 at paragraph no. 89

without prejudice in the said certificate.

In the considered opinion of this Court, this judgment supports the contention of the Petitioner herein that the issuance of the NOC dated 10.07.2023 was conditional and does not foreclose the rights of the Petitioner to maintain this petition.

In fact, in this judgment, the Supreme Court has referred with approval its earlier judgment in **Supdt. (Tech. I), Central Excise v Pratap Rai**[28] wherein it was held that the implication of the term 'without prejudice' means that the cause of the matter has not been decided on merits and fresh proceedings according to law is not barred. The relevant portion of the judgment reads as under:

> 6. In the case of Thimmasamudram Tobacco Co. v. Assistant Collector of Central Excise, Nellore Division, Nellore [AIR 1961 AP 324] while construing the provisions of the Central Excise and Salt Act which was almost on identical terms as the Customs Act, a Division Bench of the Andhra Pradesh High Court observed as follows (AIR p. 325, para 11):
>
> > "Assuming that Section 35 of the Central Excise Act does not clothe the Appellate Authority with power to remand the matter to the officer whose order is appealed against, nothing stands in the way of the Assistant Collector initiating the proceedings afresh, when his order was quashed not on merits but on technical grounds i.e. for not following either the procedure or the dictates of natural justice. In a case where the flaw in the order appealed against consists of in the non-observance of certain procedure or in not giving effect to the maxim 'audi alteram partem', it is open to the officer concerned to start the procedure once again with a view to follow the rules of procedure and the principles of natural justice."

We find ourselves in complete agreement with the view taken by

[28] (1978) 3 SCC 113 at paragraph nos. 6 and 7

the Andhra Pradesh High Court and the observations made by Reddy, C.J. who spoke for the Court. It is obvious that in the instant case the Appellate Collector found that the order of the Assistant Collector suffered from a serious procedural infirmity viz. that it was passed without giving the respondent a proper opportunity of being heard, and, therefore, had to be vacated. In such circumstances, therefore it cannot be said that fresh proceedings by complying with the rules of natural justice could not be started against the respondent. The Appellate Collector has clearly used the words "without prejudice" which also indicate that the order of the Collector was not final and irrevocable. The term "without prejudice" has been defined in Black's Law Dictionary as follows:

> **"Where an offer or admission is made 'without prejudice', or a motion is denied or a bill in equity dismissed 'without prejudice', it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost, except in so far as may be expressly conceded or decided. See, also, Dismissal Without Prejudice."**

Similarly, in Wharton's Law Lexicon the author while interpreting the term "without prejudice" observed as follows:

> "The words import an understanding that if the negotiation fails, nothing that has passed shall be taken advantage of thereafter; so, if a defendant offers, 'without prejudice', to pay half the claim, the plaintiff must not only rely on the offer as an admission of his having a right to some payment.
>
> The rule is that nothing written or said 'without prejudice' can be considered at the trial without the consent of both parties—not even by a Judge in determining whether or not there is good cause for depriving a successful litigant of costs.... The word is also frequently used without the foregoing implications in statutes and inter partes to exclude or save transactions, acts and rights from the consequences of a stated proposition and so as to mean 'not affecting', 'saving' or excepting."

7. In short, therefore, the implication of the term "without

> prejudice" means (1) that the cause or the matter has not been decided on merits, (2) that fresh proceedings according to law were not barred. It is true that the Appellate Collector does not say in so many words that the case is remanded to the Assistant Collector but the tenor and the spirit of the order clearly shows that what he intended was that fresh proceedings should be started against the respondent after complying with the rules of natural justice. Thus, in our view a true interpretation of the order of the Appellate Collector would be that the order of the Assistant Collector was a nullity having violated the rules of natural justice and having been vacated the parties would be relegated to the position which they occupied before the order of the Assistant Collector was passed. In this view of the matter the Assistant Collector had ample jurisdiction in issuing the notice against the respondent in order to start fresh adjudicatory proceedings in accordance with law.
>
> [Emphasis supplied]

43. This Court thus, finds merit in the Petitioner's submission that since the said NOC was expressly accompanied by an endorsement of "without prejudice" the Petitioner did not waive its rights and objections qua the impugned mark. The material/documents placed on record demonstrate that the Petitioner has consistently opposed the Respondent no. 1's use of the impugned mark. In this backdrop, and considering the subsisting commercial relationship between the parties, the Petitioner's limited consent in 2023-24 for enabling the disposal of the Respondent no.1's existing stock, to mitigate losses, appears to be a reasonable and pragmatic arrangement.

44. Moreover, the NOC was issued specifically for the layout of Impugned Label No. 4. The Respondent no. 1 has admittedly deviated from the said layout and on this ground *also* the NOC cannot be relied upon for the layout adopted for Impugned Label No. 6, which is currently in use. The conduct of the Respondent no. 1 in adopting Impugned Label No. 5 and 6 where once again the word ग्रैंड/GRAND has been placed in smaller font

compared to the word मस्ती/MASTI evidences the dishonest intention of the Respondent no. 1 to ride upon the reputation and goodwill of the Petitioner's marks containing the word मस्तीह्/MASTIH.

45. This Court finds no merit in the contention of Respondent No. 1 regarding alleged delay and laches on the part of the Petitioner. The record reflects continuous correspondence between the parties, wherein the Petitioner consistently opposed the use of the impugned mark. The plea that the Respondent has, invested in developing goodwill is equally untenable, particularly when the Respondent itself admits in its written submissions[29] that statutory restrictions on liquor advertising preclude promotional expenditure for the product in question. Mere reliance on sales figures for the period 2021-2025 does not establish the creation of any independent goodwill, especially in light of the substantial and prior sales of the Petitioner already noted herein. This Court, therefore, finds no merit in the submission of Respondent no. 1 that the Petitioner's claim is barred by waiver and estoppel from maintaining these proceedings, as there has been no conscious waiver of his rights.

Jurisdiction

46. The Respondent has also questioned the jurisdiction of this Court to entertain this petition on the ground that the issue is already pending consideration before the Excise Commissioner. This objection is without merit and is no longer res integra. Reliance placed by the Petitioner on the judgment of the Coordinate Bench in **M/s Radico Khaitan Limited v. M.S. Brima Sagar** (supra) is apposite, wherein it has been categorically held that questions relating to infringement and passing off fall squarely within the

[29] At para VI bullet point 2

jurisdiction of this Court, and that the pendency of proceedings before the Excise Commissioner does not operate as a bar to the maintainability of such proceedings. This proceeding seeking rectification of the Trademark Register is a statutory remedy available to the Petitioner. This relief of rectification cannot be granted by the Excise Commissioner and thus, these proceedings have been rightly instituted.

Statutory grounds invoked by the Petitioner under the Act of 1999, which are attracted in the facts of this case

47. The Petitioner has averred that the impugned registration is in violation of Section 2(1)(i)(iv) of the Act of 1999 as the impugned mark is devoid of any distinctive character and is not capable of distinguishing the goods of the Respondent from those of the Petitioner. It has also averred that the impugned mark is deceptively similar to the Petitioner's dominant feature मस्तीह/MASTIH causing confusion and deception among the public to believe that the origin of the rival products is same, thus violating Section 2(1)(i)(IV) of the Act of 1999. The said provisions read as under: -

> **"Section 2: Definitions and Interpretation.-**
> (1) In this Act, unless the context otherwise requires, -
> …
> (i) false trade description means—
> …
> (IV) any marks or arrangement or combination thereof when applied-
> (a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are;
> (b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person whose services they really are; or
>
> (Emphasis supplied)

48. The Petitioner has contended that the impugned registration is violative of Section 11(1) 11(3)(a) and 11(10)(ii) of the Act of 1999, which reads as under:

> "11. (1) Save as provided in section 12, a trade mark shall not be registered if, because of---
> (a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or
> (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark.
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark
> … …
>
> (3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented-
> (a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade
> (b) by virtue of law of copyright
> … …
>
> (10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall--
> (i) protect a well-known trade mark against the identical or similar trade marks;
> (ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.
>
> … …"

(Emphasis supplied)

49. Having concluded that the Petitioner is the prior adopter of the trademarks which constitute मस्तीह्/MASTIH as the dominant feature of its mark and that the Respondent's adoption of the impugned mark ग्रैंड मस्ती/GRAND MASTI with the identical dominant feature मस्ती/MASTI in the year 2021, with the prior knowledge of the Petitioner's existing mark and the reputation as well as goodwill subsisting therein, cannot be regarded

as bona fide. The Respondent's impugned mark is not distinctive and is incapable of distinguishing its goods from the goods of the Petitioner.

50. Keeping in view the aforesaid findings returned in favour of the Petitioner, this Court holds the said impugned mark is liable to be rectified/expunged in view of Sections 11(1), 11(3)(a) and 11(10)(ii) of the Act of 1999.

51. Accordingly, the petition is allowed and the impugned trademark registration no. 4832282 is directed to be cancelled and removed from the Trademark Register. Pending applications, if any, stand disposed of.

52. The Registry is directed to communicate a copy of this order to Respondent No. 2 through e-mail for compliance.

MANMEET PRITAM SINGH ARORA
(JUDGE)

FEBRUARY 27, 2026/AJ

ANNEXURE-A

Impugned label-1

Impugned Product 'ग्रैंड मस्ती/GRAND MASTI' Impugned Label-1

ANNEXURE-B
Impugned Labels 2 AND 3

Impugned Product 'ग्रैंड मस्ती/GRAND MASTI' Impugned Label-2	Impugned Product 'ग्रैंड मस्ती/GRAND MASTI' Impugned Label-3
	

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ANNEXURE-C
Impugned Label -4

ANNEXURE-D
Impugned label-5

Impugned Product 'ग्रैंड मस्ती/GRAND MASTI' bearing Impugned Label-5