IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for orders in the nature of Writ of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ Application No. 1196/2025

1. Hingurana Distilleries Private Limited
   No. 296, Kandy Road, Kiribathgoda.

2. Randenigala Distilleries (Private) Limited
   No. 7, Murukkuliya Road, Dankotuwa.

3. Synergy Distilleries (Private) Limited,
   Kalutara South.

4. Royal Ceylon Distilleries (Private) Limited,
   Circle Road, Malkaduwawa,
   Kurunegala.

<u>Petitioners</u>

Vs.

1. M.P.N.A. Premarathna,
   Commissioner General of Excise,
   Excise Department of Sri Lanka,
   No. 353, Kotte Road,
   Rajagiriya.

2. Secretary to the Ministry of Finance,
   The Secretariat,
   Colombo 01.

3. Honorable Attorney General,
   Attorney General's Department,
   Colombo 12.

<u>Respondents</u>

Before:	**Damith Thotawatte, J.** **K.M.S. Dissanayake, J.**
Counsels:	Chamara Nanayakkarawasam with Apoorwa Nanayakkara instructed by Sampath Yalewatta for the Petitioners. Abigail Jayakodi, SC for all the Respondents.
Supported:	15.07.2026
Order Delivered:	31.08.2026

Thotawatte, J.

Introduction

The four Petitioners are companies engaged in the manufacture and bottling of liquor under licences issued by the Excise Department. They invoke the writ jurisdiction of this Court to challenge Excise Notification No. 02/2025, published in Gazette Extraordinary No. 2460/02 dated 27.10.2025 and brought into force on 28.10.2025. The Notification was made by the Minister of Finance, Planning and Economic Development under section 32 of the Excise Ordinance and was confirmed by Parliament by resolution on 22.10.2025.

The Petitioners seek a writ of Certiorari quashing the Notification in its entirety or, alternatively, quashing Rules 4, 5 and 6 thereof. They also seek a writ of Prohibition restraining the 1st Respondent from implementing those Rules or suspending or cancelling their licences for non-compliance. The matter is presently before Court upon the question whether notice and interim relief should issue. The 1st Respondent has filed limited objections for the purpose of resisting such relief.

The Regulatory Change

Excise Notification No. 962, published in Gazette Extraordinary No. 1846/8 dated 20.01.2014, required duty on production during the first fifteen days of a month to be paid by the last day of that month and duty on production thereafter to be paid by the fifteenth day of the succeeding month. A licensee who failed to pay by the due date was liable to pay, in addition to the duty, a surcharge of three per cent per month as a fee. Rule 3 described the facility to pay in that manner as a concession limited to a maximum period of six months from the due date.

Notification No. 02/2025 retains substantially the same payment dates and the three per cent monthly charge, while clarifying that the fee is calculated linearly without compounding. The material change is found in Rules 4 and 5. Under Rule 4, a licensee who fails to pay the duty and fee in full within thirty days of the due date becomes liable to have the Bottling Licence, Excise B1, suspended. Under Rule 5, if the default continues beyond ninety days, all licences of that licensee become liable to suspension. Rule 6 provides that, for liabilities falling due before the Rules came into operation, those periods are calculated from 28.10.2025. Rule 7 rescinds Notification No. 962.

The Petitioners' Challenge

The Petitioners contend that the removal of the former six-month concession and the introduction of licence suspension are arbitrary, unreasonable and disproportionate; defeat a legitimate expectation founded upon the previous regime; rest upon irrelevant considerations while excluding relevant considerations; operate retrospectively; offend the rule of law; and threaten smaller manufacturers and competition. Their principal legal contention is that the Minister exceeded the rule-making power conferred by section 32 of the Excise Ordinance.

The 1st Respondent denies illegality, unreasonableness, irrationality, disproportionality and improper purpose. He states that the Petitioners owed excise duties to the State as at 31.12.2025 and, in paragraph 10 of the limited objections, that the B1 licences issued to the 2nd and 3rd Petitioners were suspended with effect from 16.12.2025 under Notification No. 02/2025. The reference in that paragraph to the '2 and 3 Respondents' is plainly a reference to the 2nd and 3rd Petitioners when read with the caption and the subject matter of the averment.

The Statutory Scheme

The validity of delegated legislation must be considered against the parent enactment as a whole. Section 32(1) authorizes the Minister to make rules for carrying out the provisions of the Excise Ordinance or any other law relating to excise revenue. Rules confirmed by Parliament and notified in the Gazette have the force of law. Section 32(2) states that its particular grants of rule-making power are without prejudice to the generality of section

32(1). Among them, section 32(2)(k) expressly authorizes rules regulating the time, place and manner of payment of any duty or fee.

More directly, section 27(1)(a) provides that, subject to such restrictions as the Minister may prescribe, the authority granting a licence, permit or pass may cancel or suspend it if any duty or fee payable by its holder is not duly paid. Section 25 further contemplates that licences may be granted subject to restrictions and conditions. The Ordinance therefore does not confine the consequence of non-payment only to a monetary surcharge. It expressly recognizes suspension or cancellation for non-payment and permits the Minister to prescribe restrictions governing that statutory power.

In that setting, Rules 4 and 5 prescribe staged temporal thresholds. The Bottling Licence becomes liable to suspension only after thirty days of non-payment, while all licences become liable to suspension only where non-payment exceeds ninety days. Those Rules regulate the circumstances in which the pre-existing statutory power under section 27(1)(a) may be exercised. At least for the purpose of deciding whether notice should be issued, the Petitioners have not shown how those Rules are inconsistent with, repugnant to, or beyond the authority conferred by the Excise Ordinance.

Comparison with CA/WRT/1082/2025

In ***Finnland Distilleries Corporation (Private) Limited*** Vs***. Commissioner General of Excise and Others***[1], this Court declined to issue notice upon a materially similar challenge to Notification No. 02/2025. The Court held that the mere fact that the earlier Notification imposed financial consequences while the new Notification introduced exposure to licence suspension demonstrated a change in regulatory policy, but did not, without more, establish that the Minister had exceeded section 32. The allegations of arbitrariness, unreasonableness, disproportionality, legitimate expectation, mala fides, impairment of competition and retrospectivity were found to be unsupported by sufficient factual material or legal analysis.

There is, however, one material factual difference. In "***Finnland Distilleries"*** no licence had been suspended and the complaint concerned prospective enforcement. In the present case, the 1st Respondent admits that the B1 licences of the 2nd and 3rd Petitioners were suspended with effect from 16.12.2025. The Petitioners amended pleading likewise states

[1] CA/WRT/1082/2025, decided on 07.07.2026

generally that the licences of some Petitioners were suspended after the institution of the original application and that the affected Petitioners thereafter paid the amounts due.

That distinction removes the basis for treating the claims of the 2nd and 3rd Petitioners as founded solely upon an apprehended future act. It does not, however, establish that Notification No. 02/2025 is *ultra vires*, nor does it cure the deficiencies in the challenge directed against the Notification itself.

The Subsequent Suspensions

The amended petition does not seek *Certiorari* to quash the individual decisions suspending the B1 licences of the 2nd and 3rd Petitioners. It does not clearly identify the decision-maker, set out the complete terms of each suspension, or plead developed grounds directed to the legality of the particular administrative decisions. Instead, the Petitioners expressly reserve the right to challenge those subsequent steps separately, according to the circumstances applicable to each company.

That reservation cannot enlarge the relief presently before Court. *Certiorari* is directed to an identifiable decision brought before the Court and challenged upon pleaded grounds. *Prohibition* operates to prevent an unlawful act which remains to be performed; it is not the appropriate remedy to undo a suspension already imposed. Although quashing the parent Notification might affect the legal foundation of a suspension, the Petitioners must first disclose an arguable ground for quashing the Notification. For the reasons already stated, they have not done so.

As regard the 1st and 4th Petitioners, no material demonstrates that any licence held by either company was suspended or that an individual enforcement decision was made against it. Their claim for Prohibition remains contingent upon the continuation of default and the future exercise of the statutory discretion. In any event, the requested prohibition cannot be sustained merely upon the proposition that Rules 4 and 5 differ from the former policy.

The Remaining Grounds

The plea of legitimate expectation rests exclusively upon the continuation of the regime established by Notification No. 962. That Notification itself limited the concession to six months and did not contain a representation that the regulatory scheme would remain unaltered indefinitely. A prior rule cannot, without more, generate an enforceable expectation that the competent rule-maker will never amend or rescind it, particularly where the later Rules were confirmed by Parliament in the manner contemplated by section 32(1). No distinct promise, assurance or representation made to any Petitioner has been identified.

The allegations of arbitrariness, unreasonableness and disproportionality are pleaded as conclusions. The Petitioners have produced no financial, industry or expert material from which the Court could conclude that the thirty-day and ninety-day thresholds are irrational or manifestly disproportionate to the public interest in the timely collection of excise revenue. Their assertion that the former three per cent charge adequately protected State revenue invites the Court to choose between competing regulatory policies; it does not, by itself, establish illegality.

The contention that the Rules imperil smaller manufacturers and reduce competition is likewise unsupported by company accounts, cash-flow evidence, market data or other objective material. The Court cannot infer illegality from an particularized prediction of commercial disadvantage.

Rule 6 applies to excise duties that had become payable before 28.10.2025. However, the thirty-day and ninety-day periods are calculated only from 28.10.2025, when the new Rules came into operation. The Petitioners have not shown that, before that date, they had acquired a legal right preventing licence suspension for unpaid duties. Nor have they explained why giving them fresh periods of thirty and ninety days from 28.10.2025 makes Rule 6 unlawfully retrospective. Therefore, the allegation of retrospectivity has not been sufficiently established.

The allegation that relevant considerations were ignored and irrelevant considerations considered does not identify the particular considerations, the material demonstrating their relevance or irrelevance, or the decision-making record supporting that conclusion. The broader references to the rule of law and disproportionality add no independent factual or legal foundation.

The preliminary objections

The limited objections additionally invoke laches, non-compliance with the Supreme Court Rules, non-joinder, suppression, misrepresentation, want of clean hands, futility and abuse of process. Those objections are stated in general terms and are not supported by sufficient particulars to permit definitive findings upon each of them. It is unnecessary to uphold them. The application fails because the Petitioners have not disclosed a *prima facie* public-law ground warranting notice upon their challenge to the Notification, while the subsequent suspension decisions are neither distinctly impugned nor the subject of corresponding relief.

Conclusion

The difference between Notification No. 962 and Notification No. 02/2025 establishes a deliberate change in the regulatory consequences of delayed payment. It does not establish that the change is unlawful. Read with sections 27(1)(a) and 32 of the Excise Ordinance, Rules 4 and 5 operate within a statutory framework which expressly contemplates suspension for non-payment of duty or fees. The remaining grounds are unsupported by the material necessary to disclose an arguable case for judicial review.

The actual suspension of the B1 licences of the 2nd and 3rd Petitioners distinguishes this matter factually from CA/WRT/1082/2025, but not in a manner which sustains the relief sought. Those individual suspensions have not been made the subject of prayers for *Certiorari* and the Petitioners have expressly reserved any challenge to them for separate proceedings.

Accordingly, notice and interim relief are refused. The amended petition is dismissed. In the circumstances, I make no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal