

BEFORE THE FINANCIAL COMMISSIONER (EXCISE),

HIMACHAL PRADESH

(Block No. 30, SDA Complex, Shimla-09)

Appeal No. 09/2023

CMA No. 02/2023 in appeal No. 09/2023

Date of Institution: 11-12-2023

Date of Order: 12-12-2023

In the matter of:

M/s Manali Wine Traders Lic. L-2/L-14

Unit No. 1, Solangnala-Mall Road-Manali-Rangri-Prini-Haripur,
District Kullu (Year 2023-24)**Applicant/Appellant**

Vs

Collector (Excise)-cum- Jt. Commissioner (ST&E),
Central Zone, Mandi & Ors

.....**Non-applicants/Respondents**

Present:

1. Shri Jagat Pal, Learned Advocate and Shri Harish Kumar, Learned Advocate, vice, Shri Jagat Pal, Learned Advocate for the appellant.
2. Shri Wishve Bhaskar, ACST&E (Legal Cell) along with Dr. Neel Chand, AST&EO, Manali Circle, District Kullu, HP, for the Respondents.

ORDER

1. The application above has come up seeking modification of the interim order dated 02-12-2023 passed in CMA No. 1 in Appeal No. 09 of 2023 filed by the applicant M/s Manali Wine Traders Lic. L-2/L-14 Unit No. 1, Solangnala-Mall Road-Manali-Rangri-Prini-Haripur, (Year 2023-24), District Kullu, HP. The original appeal above was filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011 against the order dated 01-12-2023 passed by the Collector (Excise)-cum-Jt. Commissioner State Taxes & Excise, Central Zone, Mandi. Vide impugned orders, in lieu of default in paying the due license fee for the month of October, 2023 and, the licensee, thus, being declared defaulter under the provisions contained in condition No. 2.42 of the ANNOUNCEMENTS FOR THE ALLOTMENT OF RETAIL EXCISE VENDS BY AUCTION-CUM-TENDER FOR THE YEAR 2023-24 (hereinafter referred to as "the ANNOUNCEMENTS"), the licenses of the appellant/applicant in respect of vendes under L-2/L-14 Unit No. 1,



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Solangnala-Mall Road-Manali-Rangri-Prini-Haripur, were cancelled under section 29 of the Himachal Pradesh Excise Act, 2011, read with condition No. 2.42 of the Announcements, for the Year 2023-24, with immediate effect. Feeling aggrieved by the above order of cancellation of licenses in respect of vends in Unit above, the appellant had preferred an appeal along with an application (CMA No. 1/2023 in appeal No. 09/2023) requesting therein to permit him to continue with the Unit above subject to deposit of some remaining license fee for the month of October, 2023.

2. After hearing the applicant, the application was disposed of by passing an interim order, dated 02-12-2023. Para 3 of the interim order is reproduced hereunder:

"3. Learned Advocate for the appellant, accordingly produced the proof of having deposited the payable pending license fee for the month of October, 2023 in respect of default Unit above. In addition to this, the authorized partner of the applicant/licensee firm also submitted an under taking to the effect of depositing the license fee for the month of November 2023 on or before 10-12-2023. In view of above facts, the intent shown by the applicant and the undertaking given, the order dated 01-12-2023 passed by the Collector (Excise) Central Zone-cum-Jt. Commissioner State Taxes & Excise, CZ, Mandi as well as the notices for the re-allotment of the concerned Units are stayed till the next date of hearing i.e. 11-12-2023. List the matter, accordingly on 11-12-2023 at 11:00AM."

3. As per directions contained in para 3 of the interim order above, the matter was taken up for hearing on 11-12-2023, wherein the Learned Advocate for the appellant submitted that as license fee for the month of October, 2023 stands deposited in full, therefore, the impugned order dated 01-12-2023 passed by respondent No. 1 and is challenged in present appeal may be rendered infructuous. But the appellant-licensee, side by side, submitted another application (CMA No. 2/2023 in appeal No. 09/2023) requesting therein to modify the interim order dated 02-12-2023 in the light of order dated 04-12-2023 passed in appeal No. 10/2023 in the matter of M/s Sunil Khandelwal and Sunil Singh Vs Collector (Excise), South Zone & Anr. During the course of hearing in the matter, the Learned Counsel for the



applicant/appellant, though agreed that License fee for the month of November, 2023 which as per undertaking given on dated 02-12-2023, was to be deposited on or before 10-12-2023 could not be deposited as per undertaking given and license fee of about ₹ 1.5Crores has only been deposited in lieu of payable monthly license fee of ₹ 4, 45, 97, 043/-. The non-applicants/respondents were granted time till 04:00PM (on 11-12-2023), to file reply to the above application. The non-applicants/respondents accordingly filed the reply and copy of the reply was furnished to the applicant-licensee and as the applicant requested to grant time to file rejoinder, therefore, allowing the request, the matter was listed for 12-12-2023.

4. Today i.e. on 12-12-2023, Shri Harish Kumar, Learned Advocate appeared as vice on behalf of the original Learned Counsel for the applicant and submitted that in addition to the fee already deposited till 11-12-2023, a further sum of about ₹ thirty-five lakh only could be deposited against the undertaken payable monthly fee of ₹ 4, 45, 97, 043/-. However, the representative for the non-applicants/respondents submitted that the appellant has not produced any treasury receipts/ E-Challans on record in proof of having deposited any sum towards license fee today. The representative for the non-applicants/respondents further submitted that by not depositing the entire due fee for the month of November, 2023 by the due date (i.e. 07-12-2023) and not even by the undertaken date (i.e. 10-12-2023), the licensee has clearly breached the undertaking as well as the provisions of the HP Excise Act, 2011 and conditions of the ANNOUNCEMENTS for the year 2023-24, therefore, by the applicant's own act of omission, the application for the modification of the interim order is not sustainable.

5. I have heard the parties in the matter and gone through the facts and record in the case. It is revealed and undisputed that the appellant has deposited the fee of October, 2023 in full. However, during the course of hearing in appeal (No. 09/2023), above, the applicant had filed an application praying therein that subject to payment of fee for the month of October, 2023, the impugned order and the subsequent proceedings may be stayed. The applicant had also given an



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undertaking that the due license fee for the month of November, 2023 will be deposited on or before 10-12-2023 and an interim order, dated 02-12-2023, in CMA No. 1/2023 in appeal No. 09/2023, was accordingly passed. The contents of para 3 of the interim order, quoted in para 2 above, make it amply clear that the interim order was passed firstly, in view of the intent exhibited by the applicant; secondly, for the fact that the default amount for the month of October, 2023 was deposited in full; and last but not the least, the undertaking given by the applicant that the due monthly license fee for the month of November, 2023 will be deposited on or before 10-12-2023. But, by not depositing the fee for the month of November, 2023 either by due date (07-12-2023) or undertaken date (10-12-2023), the appellant/applicant has clearly breached the provisions of the HP Excise Act, 2011 read with condition No. 2.42 of the ANNOUNCEMENTS for the year 2023-24 and the appellant/applicant, by its own act of omission and commission, has rendered himself liable to be proceeded against as per applicable provisions of the Act, Rules and the ANNOUNCEMENTS for the year. Accordingly, the present application seeking modification of the interim order dated 02-12-2023 being without bonafide and merit is not sustainable and is disposed of accordingly. It is pertinent to mention here that the order passed in appeal No. 10/2023 and relied upon by the applicant/appellant is not applicable to the present appeal as in appeal No. 10/2023, the applicant had not submitted any undertaking to the effect of depositing the fee of November, 2023 by 10-12-2023.

6. The appeal and Miscellaneous applications are, accordingly, disposed of as per discussion in para 5 above. The appellant on account of failure to abide by the terms and conditions of the licenses granted to it under the Unit No. 1, Solangnala-Mall Road-Manali-Rangri-Prini-Haripur, for the above discussed acts of omission and commission, is liable to be proceeded against as per provisions of the HP Excise Act, 2011 read with condition No. 2.42 of the ANNOUNCEMENTS for the year 2023-24. Respondent No. 1 i.e. Collector (Excise)-cum-Jt. Commissioner (ST&E), Central Zone, Mandi to take the necessary action, accordingly, as per provisions of the Act, Rules and the ANNOUNCEMENTS for the year.



7. Parties be informed and file be consigned to records.

**ANNOUNCED IN OPEN COURT ON THIS DAY i.e. 12th of
DECEMBER, 2023**




**Financial Commissioner (Excise)
Himachal Pradesh**

Endst. No. DoST&E/FC(E)-Reader/2023/33267-277 Dated:12-12-2023

Copy for information and further necessary action to:

1. M/s Manali Wine Traders Lic. L-2/L-14 Unit No. 1, Solangnala-Mall Road-Manali-Rangri-Prini-Haripur, District Kullu (Year 2023-24) Office Royal Hotel Bhajogi, PO & Tehsil Manali, District Kullu, HP.
2. Collector (Excise)-cum-Jt. Commissioner State Taxes & Excise, Central Zone, Mandi, District Mandi, HP.
3. Dy. Commissioner State Taxes & Excise, District Kullu, HP
4. Legal Cell, HQ.

5. IT Cell.


Reader