

**BEFORE THE FINANCIAL COMMISSIONER (EXCISE),
HIMACHAL PRADESH**

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

Appeal No.:14/2023

Date of Institution: 14-12-2023

Date of Order: 20-01-2024

In the matter of:

M/s Gurmail Singh, Lic. (Year 2023-24)

Unit No. 06, Malkhumajra, BBN

.....Appellant

Vs

1. Collector (Excise)-cum- Addl. Commissioner (ST&E),

South Zone, Shimla-09

2. Dy. Commissioner (ST&E), BBN, Revenue District BBN

.....Respondents

Present:

1. S/Shri Satish K. Awasthi and Goverdhan Sharma, Learned Advocates, for the appellant.
2. Shri Rakesh Rana, Deputy Director (Legal Cell) along with Shri Prem Singh Kaith, ACST&E, Revenue District BBN, for the respondents.

ORDER

1. The present appeal has been filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011 against the order dated 13-10-2023 of the Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, South Zone, Shimla-09, passed in Excise Case No(s). 264, 265, 266, 267, 268 and 269/2023-24 in the matter of Dy. Commissioner State Taxes and Excise, Revenue District BBN Baddi (Applicant) Vs 1. M/s Jarnail Singh, Retail licensee, Unit No. 1, Nalagarh, BBN Baddi, 2. M/s Lekh Ram, Retail licensee, Unit No., 2 Barotiwala, BBN Baddi, 3. M/s Bhupender Kaur, Retail Licensee, Unit No. 3, Sai Road, BBN Baddi, 4. M/s Subhash Kumar, Retail licensee, Unit No. 4, Katha, BBN Baddi, 5. M/s Gurmail Singh, Retail licensee, Unit No. 6, Malkhumajra, BBN Baddi, and 6. M/s Nirmal Singh and others, Retail licensee, Unit No. 7, Kishanpura, BBN Baddi. Vide impugned collective order above, the Collector (Excise)-cum- Addl. Comm. ST&E, South Zone, Shimla-09 (hereinafter referred to as "the respondent No. 1") has imposed a sum of ₹ 25, 000/- (each) up on the respondents



above for violating the provisions of condition No. 4.2 (a) (III) of the Excise Policy for the year 2023-24 (ANNOUNCEMENTS FOR THE ALLOTMENT OF RETAIL EXCISE VENDS BY AUCTION-CUM-TENDER FOR THE YEAR 2023-24). In addition to this, the respondents, above, have also been directed to deposit the differential license fee on the lifted IMFL quota. Respondent No. 5 i.e. M/s Gurmail Singh, Retail Licensee, Unit No. 6-Malkhumajra BBN Unit (Year 2023-24) (herein after referred to as the "the appellant"), felt aggrieved by the above order of imposition of a sum of ₹ 25,000/- for violating the provision vide Condition No. 4.2 (a) (III) and further order of deposition of differential amount of ₹ 25, 49, 946/-, has preferred the present appeal.

2. Briefs, further, in the matter are that the appellant is a licensee of retail liquor vendes under Unit No. 6-Malkumajra, for the year 2023-24, in Revenue District BBN Baddi. The Unit, with an Annual Minimum Guaranteed Quota (MGQ) of 1, 95, 509.927 proof litres of Country liquor and 1,26,851.748 proof litres of IMFL and reserve price of ₹10, 76, 77, 233/-, on being the highest bidder, was allotted to the appellant for an annual license fee of ₹ 16, 70, 00, 000-/. The Government vide letter dated 27-03-2023 approved the revision (proportionate with bid offered) of the quota of country and foreign liquor respectively to 3, 19, 052.306 proof litres and 1, 86, 495.566 proof litres. Post bid revision of quota above is sub-judice as the same is under challenge before the Hon'ble High Court of Himachal Pradesh vide CWP No. 6286 of 2023, filed by the appellant.
3. Shri Satish K. Awasthi, Learned Advocate for the appellant argued that IMFL quota is being lifted only after payment of prescribed rate of license fee fixed for the slab as per condition 4.2 (a) (III) and the passes, by the respondents itself, are issued only after payment of appropriate license fee as per slab rate. The appellant claimed that it had lifted 50,138.641 PLs of IMFS during the period April, 23 to August, 2023 and paid the total license fee payable on this quota as per rates fixed for different EDP slabs (as fixed under clause 4.2 (a)6 item No.III) which is to the tune of ₹ 2,37,51,346/- in respect of all the vendes of the Unit. The appellant claimed that the software developed for the issue of excise passes by the respondent Department is such that no licensee can

obtain an excise pass without paying the license fee at the appropriate rate as fixed under condition 4.2 (a) (III). The license fee deposited by the appellant from time to time stands as credit available to the appellant in the wallet, and the license fee gets automatically deducted from the wallet as and when the excise pass is generated.

4. Learned Advocates further argued that despite paying full license fee, respondents have issued a show cause notice dated 13.09.2023, alleging therein that the appellant had not paid the license fee at the appropriate rate of license fee and besides directing to pay an amount of ₹ 25, 49, 948/- on account of license fee short paid, penalty has also been levied up on it.
5. Learned Advocates further argued that in view of the fact that the appellant, during the course of the year, shall be lifting some of the brands of IMFL on which higher slabs of the license fee are applicable under condition No. 4.2 (a) (III), the appellant had offered bid much more than the reserve price of the unit fixed by the authorities during the Auction-cum-tender process. **The higher bid offered by the appellant, therefore, already includes in it the license fee payable on the lifting of brands of IMFL on which higher slabs of license fee are applicable and nothing more can be demanded from it.**
6. Referring to the rules the learned Advocates, on behalf of the appellant, argued that the allotment of vends/Units through Auction-cum-Tender and the determination of the annual license fee is governed by rule 36 of the HP Liquor License Rules, 1986, and the rules, sub-rules, therein, nowhere provide that the successful allottee of the retail liquor vends is required to pay any amount more than the annual license fee fixed as per Auction- cum-Tender. The Learned Counsels for the appellant emphasized that the appellant has, actually, paid the higher license fee on the lifting of brands on which a higher slab of the license fee is applicable and denied the claim of the respondents that the appellant has paid the license fee at the base rate of ₹425 per proof litre only. The appellant, as per its arguments, is paying installments of the license fee in accordance with condition 2.42 of the Excise Announcements for the



year 2023-24, which is higher than the reserve price fixed based on the basic rate of license fee.

7. The learned counsels for the appellant also submitted that the extra demand is being made on account of license fee on the unlifted quota remaining to be lifted out of the revised quota re-fixed by the Government after the auction, which has been disputed by the appellant before the Hon'ble High Court and in which the Hon'ble Court has granted interim relief to the appellant. Till the time the matter of revision of quota is not decided by the Hon'ble Court, the license fee **on the basis of unlifted "enhanced quota" cannot be charged from the appellant.**
8. Learned Advocates concluded their arguments in the matter by submitting that any differential license fee which the appellant is liable to deposit on higher slab EDP, in respect of IMFL, will be deposited only in the last month i.e. in the month of March, 2024, being the final vend/unit value.
9. **Respondents**, on the other hand, replied that the appellant has paid IMFL fee only on minimum slab whereas IMFL quota of higher slabs has been lifted by the appellant and the appellant has not deposited the differential IMFL license fee payable on higher EDP slab which, after calculations, for the first five months comes out to be ₹ 25, 49, 946/-. Respondents also submitted that license fee for country liquor is fixed @₹ 275/- per proof litre and there being no slab differentiation, thus, there is no dispute in respect of country liquor license fee.
10. **In view of arguments and discussion above, finding on the following issues is there to be given:**
 1. **Can this Court proceed to decide the issues raised in the appeal, given that the issue of lifting the revised (enhanced) minimum guaranteed quota (MGQ) is sub-judice?**



- II. **Whether the appellant is liable to pay the differential license fee on the lifted higher slab EDP IMFL Quota?**
- III. **If yes, when the differential license fee is liable to be deposited?**

Findings on Issue No. I:

The contending parties on behalf of appellant and respondents agree that the issue sub-judice before the Hon'ble HP Court is regarding enhancement of liquor quota (after revision) over the MGQ fixed for the vends/Unit before March 27, 2023. Payment of license fee on the lifted MGQ, the issue in the present appeal, as such, is not the issue of contention before the Hon'ble Court in CWP No. 6286 of 2023. Moreover, the respondents in the present case, irrespective of fixed MGQ, insisted upon payment of license fee only on the lifted IMFL quota as per EDP slab fixed under Condition No. 4.2 (a) (III) of the Excise Policy. The respondents have demanded the license fee from the appellant on the basis of **lifted IMFL quota** prescribed slab-wise and no fee is being demanded on un-lifted IMFL quota. Even if MGQ is brought down to its original position as approved before the auction proceedings even then the appellant is required to pay slab-wise license fee on the lifted IMFL quota (as mentioned in the condition on 2.16 of the Policy) accepted as per bid/tender. In view of above, this Court can proceed to redress the further grievances, accordingly raised by the appellant in the appeal.

Findings on Issue No. II:

Condition No. 2.16 of the Excise Policy for the year 2023-2024 stipulates as under:

"There shall be a fixed license fee in respect of Country Liquor. In the case of IMFL and BII, there are four slabs of license fee based on EDP rates and final value of the vend/unit shall be determined on the basis of EDP of different slabs of IMFL lifted by the licensee. For the purposes of fixation of reserve price of the vend/unit, the license fee applicable for the lowest slab of IMFL shall be taken as reference. The annual License Fee (MVV) of a particular vend/unit shall finally be determined based on the highest bid offered by successful tenderer/bidder. The quota of closed vends will be allocated to the nearby vends. In case of opening of a new vend, quota of that vend will be



determined by the District In-charge concerned. No bid/tender submitted below the reserve price will be accepted".

From the quoted provisions in the Policy that: "**For the purposes of fixation of reserve price of the vend/unit, the license fee applicable for the lowest slab of IMFL shall be taken as reference.**", it is clear that the lowest slab of IMFL (@425/- PPL) is for the purpose of fixation of reserve price of the vend/unit (₹10, 76, 77, 233/- in the present case) and the licensee (here the appellant) is liable to pay license fee in respect of IMFL at the rate prescribed as per EDP slab. The bid of ₹ 16, 70, 00, 000/- only as offered by the appellant is only the Minimum Vend/Unit Value and not the fixed license fee for the explicit provisions given: "**The annual License Fee (MVV) of a particular vend/unit shall finally be determined based on the highest bid offered by successful tenderer/bidder.**" (Emphasis supplied.). In view of this explicit provision and provisions given under Condition No. 4.2 (a) (III) of the Excise Policy, where different license fee rates as per EDP slab are prescribed and, are, thus payable for the quota of IMFL lifted, **the appellant is liable to pay differential license fee as per IMFL quota lifted slab-wise:**

{4.2 (a) (III)}

Kinds of Liquor.	Rate of LICENSE FEE 2023-24
I. Country Liquor	Rs. 275/- PER PROOF LTR.
II. X X X X	X X X X X
III. Indian Made Foreign Spirit:	
a) EDP up to Rs.900/-per case	Rs. 425/- PPL
b) EDP Rs. 901 to Rs.1800/- per case	Rs. 470/- PPL
c) EDP Rs. 1801 to Rs 3600/- per case	Rs. 490/- PPL
d) EDP Rs. 3601 and above per case	Rs. 550/- PPL

For the provisions and reasons discussed in this para, it is apparent that the highest bid offered by the appellant/licence in respect of the vend/Unit is the minimum vend/Unit value (and not the maximum). If the license fee was to be charged on the basis of bid/tender amount only then conditions No. 4.2 (a) (III) and 2.16 would not have been there in the Policy. Hence, the contention of the appellant that "**the higher bid offered by the appellant, therefore, already includes in it the license fee payable on the lifting of brands of IMFL on which higher slabs of license fee are applicable and nothing more can be demanded from it**" being contrary



to the provisions contained in the Policy for the year 2023-24, is liable to be rejected and is rejected accordingly.

Findings on Issue No. III:

In above context, it will be relevant to repeat Condition No. 4.2(a) and refer to Clause No. 4.4 (a) of the Excise Policy:

4.2(a) The license fee on the various kinds of liquor has been fixed for the year 2023-24 is as under:-

Kinds of Liquor.	Rate of LICENSE FEE 2023-24
I. Country Liquor	Rs. 275/- PER PROOF LTR.
II. X X X X	X X X X X
III. Indian Made Foreign Spirit: a) EDP up to Rs.900/-per case b) EDP Rs. 901 to Rs.1800/- per case c) EDP Rs. 1801 to Rs 3600/- per case d) EDP Rs. 3601 and above per case	Rs. 425/- PPL Rs. 470/- PPL Rs. 490/- PPL Rs. 550/- PPL

4.4 (a) The recovery of License Fee shall be linked with the transport/lifting of Country Liquor and Foreign Spirit quota. The licensee shall deposit the License Fee into the Government treasury before obtaining the excise pass for issue of liquor from the wholesaler or at the time of issue of permit as the case may be.

(b) X X X X X X X X

(c) The licensee shall be required to deposit License Fee in respect of other kinds of liquor like beer etc. into Govt. Treasury, for which no minimum guaranteed quota has been fixed, before obtaining excise pass for transportation. This shall be in addition to the MVV determined.

(h) The license fee as shown above will be recoverable at the time of issue of permit in case of inter district procurement or pass in case of procurement of liquor within the district.

For the above given (emphasis supplied) provisions in the Policy, it is clear that all license fee is payable at the time of issue of pass/permit, therefore, the differential fee as has been calculated by the respondents has already become payable and the disposition of the appellant that any differential fee which remains payable on account of different rate of license fee *vis a vis* varied EDP slab, will be paid by the close of license/lease period is against the provisions of the Policy, Act, Rules and Orders. This argument and disposition of the appellant being

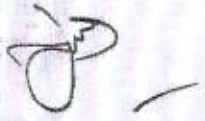


contrary to the provisions contained in the Policy for the year 2023-24, is liable to be rejected and is, as well, rejected accordingly.

11. In view of detailed discussion and findings given in para 10 above, I do not find any merit in the issues raised and prayer made in the appeal. The order, dated 18-11-2023, wherein the respondent No. 1 has imposed a sum of ₹ 25, 000/- up on the appellant licensee for violating the provisions of Condition No. 4.2 (a) (III) of the Policy, along with the further order to deposit the differential amount of license fee, as passed by the respondent No. 1 is, accordingly, upheld. The appeal is dismissed.
12. In view of dismissal of this appeal, the Miscellaneous Application (if any) is also disposed of. All the concerned parties be informed and the file after due completion be consigned to record room.

ANNOUNCED ON THIS DAY i.e. 20th OF JANUARY 2024.

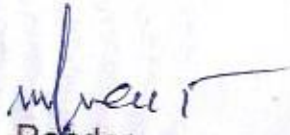



Financial Commissioner (Excise)
Himachal Pradesh

Endst. No. DoST&E/FC(E)-Reader/2024/1052-56 Dated:20-01-2024

Copy for information and further necessary action to:

1. M/s Gurmail Singh Lic. Unit No. 06, Malkhumajra, BBN, HP
2. Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, South Zone, Shimla, HP.
3. Dy. Commissioner State Taxes & Excise, BBN, HP.
4. Legal Cell, HQ.
- ✓ 5. IT Cell


Reader