

**BEFORE THE COMMISSIONER STATE TAXES & EXCISE
-CUM-FINANCIAL COMMISSIONER (EXCISE),
HIMACHAL PRADESH**

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

Appeal No. 13/2024

Date of Institution: 07-06-2024

Date of Order: 19-07-2024

IN THE MATTER OF: -

M/s Hem Pal Kalta, Retail Licensee, (Year 2024-25)

L-2/L-14, Boileauganj, Shimla

Vs

1. Addl. Commissioner, State Taxes & Excise-cum-
Collector, South Zone, Shimla-05

2. M/s Salima Devi, Retail Licensee,
L-2/L-14, Totu, District Shimla

Parties Represented by:

1. Shri Rakesh Sharma, Learned Advocate, along with Ms. Sakshi Gautam, Learned Advocate for the appellant.
2. S/Shri Wishve Bhaskar, ACST&E (HQ) and Vijay Kumar, ST&EO, District Shimla on behalf of the respondent.

ORDER

1. The above appeal filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011, is against the orders dated 29-02-2024, passed by the respondent No. 1 i.e. the Collector (Excise)-cum-Additional Commissioner (State Taxes & Excise) (South Zone). Vide impugned orders above Respondent No.1 has rejected the representation filed by the appellant. The representation was filed against the shifting of L-2/L-14 Totu vend from its original place (for the year 2023-24) to a new place (current location) which is stated to be at a distance of 550 meters from its location during the previous year, 2023-24.
2. Further briefs in the matter are that the appellant is a retail licensee of liquor vends, for the year 2024-25, under Cart Road Unit. The retail L-2/L-14 Boileauganj vend is one of the vends under this Unit. M/s Salima Devi (Respondent No. 2) is a Licensee of Totu Unit for the year 2024-25



with retail vends L-2/L- 14 Lower Totu, L-2/L-14 Totu, L-2/L-14 Kanwar Niwas Totu. It is alleged that Respondent No. 2, without prior approval from the competent authority, has shifted its L-2 / L-14 Totu vend from its existing position at Power House-Totu Chowk link road (away from NH 205) to Shimla-Mataur National Highway, 205.

3. Shri Rakesh Sharma Ld. Advocate for the appellant submitted that appellant has suffered due to this act of shifting of vend away from its assigned locality to an entirely new place, as the vends had been allotted in the name of L-2 / L- 14 Totu but has been shifted to National Highway near Boileauganj locality. The Ld. Advocate argued that legal provisions in this regard have not been appreciated by both of the respondents.
4. Ld. Advocate further argued that the controversy in the present case is with respect to retail liquor vend allocated as L-2/L-14 Totu, but, now, shifted to NH-205. This vend, for the previous year, was located on Power House-Totu Chowk link road and the distance between the two vends, L2/L-14 Totu and L-2/L-14 vend Boileauganj was about 1300 meters, but the vend now has been moved by a distance of about 550 meters towards L-2/L-14 Boileauganj, and the area to which the vend has, now, been shifted by the Respondent No. 2, is a part of Boileauganj locality. Ld. Advocate emphasized that due to the facts narrated, herein, it is illogical and irrational to setup two vends pertaining to two different licenses in the same locality for the added and emphasized fact that L-2/L-14 Totu vend should restrict to its Totu locality.
5. Taking recourse to record and procedure as provided Under HP Liquor License Rules, 1986 and Condition No. 10.2 of the ANNOUNCEMENTS FOR THE YEAR 2024-25, it is the case for the appellant that till 3 April 2024, no application with regard to setting up of vend on NH- 205 was filed before the Collector (Zone)/District In Charge, therefore, the belated application and permission is against the provisions of the Announcements 2024-25. Ld. Advocate has relied on provisions vide Rule 37 (4) of the Himachal Pradesh Liquor Licence Rules, 1986 read with Condition No. 10.2 of the ANNOUNCEMENTS for the Year 2024-25 which provide for setting up of vend in the locality specified and submitting application and seeking prior approval (i.e. on or before 1st April of the year) in respect of the vends to be opened/shifted. Ld. Advocate argued that there is no such record in respect of L2/L-14 Totu

vend when the same was shifted to its current disputed place. Taking arguments further, in the case, Ld. Advocate pleaded that it is clear that in the present case both the respondents have not adhered to the provisions of Rules and ANNOUNCEMENTS, above, especially Condition No. 10.2 regarding locality of the vend. As in the present case the Power House area is nearer to the Boileauganj locality rather than Totu.

6. Shri Wishve Bhaskar, ACSTE, HQ along with Shri Vijay Kumar, ASETO, Excise, District Shimla, submitted on behalf of the respondents that the owner of the premises where the vend was situated previously has refused to rent out the premises to the Respondent No. 2, therefore, the disputed vend has been granted approval as per provisions of the ANNOUNCEMENTS for the Year 2024-25 and as per Clause 10.5 (1):

(i) The liquor vends will have to be located in the premises which may be provided by the local bodies i.e. Municipal Corporation, Nagar Parishad or Gram Panchayat etc. for the purpose, subject to the approval of the Additional/Joint/Deputy Commissioner of State Taxes and Excise (Collector) of the Zone failing which the liquor licensees will make their own arrangements for housing the liquor vends in accordance with the provisions of these conditions. No compensation or any kind of relief for shifting such premises will be allowed to liquor licensees. The order and directions of the Commissioner of State Taxes and Excise and Addl./Joint/Deputy Commissioner of State Taxes and Excise (Collector of the Zone) will be binding on the liquor licensees.

(ii) It will be obligatory on the licensees to get the premises approved, in writing, from the respective Addl./Joint/Deputy Commissioner of State Taxes and Excise (Collector) of the zone concerned.

(iii) The Commissioner of State Taxes and Excise, Himachal Pradesh may order shifting or closure or change the name of any liquor vend during the currency of the year.

Provided that the Collector of the respective Zone will be competent to allow the shifting of vend within the same revenue estate and Panchayat during the currency of the year.

It was argued that in view of above, the appellant has no case to agitate and the appeal be dismissed.

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FINDINGS:

7. I have heard all the parties in the matter and perused the case record with respect to units and retail vends in dispute. I have also carefully considered the relevant provisions given under Rules and

ANNOUNCEMENTS. It is undisputed that retail vends under Totu Unit are in the names of L- 2/ L-14 Lower Totu, L-2/ L-14 Totu and L-2/L-14 Kanwar Niwas, Totu Chowk.

Provisions vide Condition No. 10.2 of the ANNOUNCEMENTS for the Year 2024-25, are relevant and squarely applicable in the context of present case:

[ANNOUNCEMENTS) 10.2 The licensees shall have to make their own arrangements for procuring liquor and also for suitable vends (shops) to carry on their business in the localities for which particular licenses are sanctioned. It will be obligatory on the part of the licensee to get the premises and the name of the salesman approved along with his photograph, before starting the vends. The premises will be within a specific locality, where the location is not further specified, for which such licenses are sanctioned, but licensees cannot claim that the new premises should remain restricted within the area and premises in which the vends had been functioning previously. In case the licensee fails to arrange premises for the vends to the satisfaction of the Additional/Joint/Deputy Commissioner of State Taxes & Excise of the Zone, he shall be liable to forfeiture of entire amount deposited by him and be further liable to penal action under the rules for any other loss of Government revenue, even if the business is not carried on.

Provided that when the licensee submits his application, for approval of the premises and the name of salesman, to the office of the Dy. Commissioner of State Taxes & Excise/Astt. Commissioner of State Taxes & Excise, Incharge of the district, on or before 01.04.2024 and obtains an acknowledgment from the office of the Dy. Commissioner of State Taxes & Excise/Astt. Commissioner of State Taxes & Excise, Incharge of the district in token of having submitted the aforesaid application on or before 1st April, 2024, the acknowledgement of such application shall be deemed to be a provisional approval of the premises and the name of the salesman mentioned therein including provisional grant of a license.

Also relevant are the provisions vide Rule 37 (4) of the HP Liquor License Rules, 1986:

37. (4) Licensed premises shall be premises owned or leased in by the licensee. It will be obligatory on the part of the licensees to get the licensed premises approved from the Collector before starting the shop:

[Provided that when the licensee submits his application, for approval of the premises and the name of the salesman, to the office of the Assistant Excise and Taxation Commissioner/ Excise and Taxation Officer, Incharge of the district on or before 1st April and obtains an acknowledgement from the office of the Asstt. Excise & Taxation Commissioner/Excise and Taxation Officer, Incharge of the district in token of having submitted the aforesaid application on or before 1st April, the submission of such application shall be deemed to be a provisional approval of the premises and the name of the salesman mentioned therein.]

In view of above emphasized provisions of the ANNOUNCEMENTS it is amply clear that liquor business is to be carried out in the localities for which particular licenses are sanctioned. The respondents have admitted

that the L-2/ L-14 Totu vend has been shifted from Power House-Totu Chowk link road to main road (Shimla-Mataur National Highway 205) towards Boileaganj locality. The respondents have, also, admitted that on or before 1st April 2024, there was no acknowledgement in token of having submitted the application from Respondent No. 2 regarding permission to shift the vend. Nonetheless, the respondents have added that vend had to be shifted as the owner of the old premises had refused to rent out the premises for the current year.

FINAL ORDER:

8. In view of the above quoted and explicit provisions of the HP Liquor License Rules, 1986 and Condition No. 10.2, as the retail vend L-2 / L-14 Totu has been sanctioned for Totu locality, allowing the same to function from its current disputed place {main road (Shimla-Mataur National Highway 205) towards Boileaganj locality} would be against the spirit of provisions of Rule 37 (4) read with Condition No. 10.2, above. If the vend is allowed to run from its present disputed location then the initial and intended purpose of allotting the vend to Totu (locality) would be defeated. There is conviction in the argument of the appellant that the vend by Respondent No. 2 has been shifted and allowed to function in Boileaganj locality and there is need to localize L-2/L-14 Totu vend, and, thus, retract the same to Totu locality. This contention of the appellant, based on Condition No. 10.2 of the ANNOUNCEMENTS, needs to be re-considered and decided afresh. The matter, in view of above discussion and mentioned provisions of the Rules and ANNOUNCEMENTS, is, therefore, remanded back, to the Respondent No. 1, for consideration afresh, within two weeks. Needless to say that, without being influenced by observations made herein above, the case be reconsidered as per spirit of the provisions of **ANNOUNCEMENTS** and applicable Rules. The appeal is allowed to this extent. Ordered accordingly.

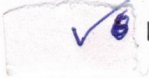
9. All the concerned parties be informed and the file after due completion be consigned to record room.



Financial Commissioner (Excise)
Himachal Pradesh

Copy for information and further necessary action to:

- 1. M/s Hem Pal Kalta, Retail Lic. L-2/L-14 Boileauganj, District Shimla.
- 2. M/s Salima Devi, Retail Lic. L-2/L-14 Totu, District Shimla.
- 3. Collector (Excise)-cum- Addl. Commissioner State Taxes & Excise, South Zone, Shimla-05.
- 4. Dy. Commissioner State Taxes & Excise, District Shimla, Shimla-09, HP.
- 5. Legal Cell, HQ.



IT Cell.

M. Anwar

Reader