

BEFORE THE COMMISSIONER OF STATE TAXES & EXCISE,

HIMACHAL PRADESH, SHIMLA-09

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

Representation No.: 01/2024

Date of Institution: 23.10.2024

Date of Decision: 22.01.2025

In the matter of:

M/S K. K. Associates, Shop No. 7, First Floor, Prakash Complex, near Toll Barrier Baddi, District Solan, Himachal Pradesh through its partner Sh. Gurcharan Singh, son of Sh. Karam Chand, resident of Haripur Sandoli, Tehsil Baddi, District Solan, Himachal Pradesh.**Petitioner**

Versus

1. State of Himachal Pradesh through Principal Secretary (State Taxation and Excise), Shimla, District Shimla, Himachal Pradesh.
2. The Commissioner of State Taxes and Excise, Kasumpti, Shimla, Himachal Pradesh. District Shimla,
3. Additional Commissioner (State Taxes and Excise), South Zone, Shimla Himachal Pradesh. 171009,
4. Deputy Commissioner (State Taxes and Excise), BBN Baddi, District Solan, Himachal Pradesh.
5. Joint Commissioner (State Taxes and Excise), BBN Baddi, District Solan, Himachal Pradesh.
6. Assistant Commissioner (State Taxes and Excise), BBN Baddi, District Solan, Himachal Pradesh
7. Excise & Taxation officer, Revenue District- BBN Baddi (H.P.)**Respondents**

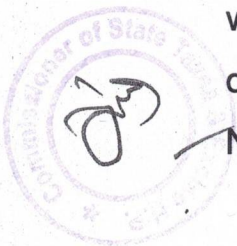
Present: Sh. Shriyek Sharda, Learned Advocate for the Petitioner.

Smt. Monica Atreya, ACST&E (Legal), for the Respondents.



ORDER

1. The Hon'ble High Court vide judgement/order dated 04-10-2024 was pleased to dispose of the CWP No. 11255/2024 with the direction to the respondent No. 2/ competent authority to consider and decide the representation dated 22-04-2024 (Annexure P-14) in accordance with law and applicable policy.
2. This order shall dispose of the representation dated 22-04-2024, filed by the petitioner i.e. M/s K.K. Associates, a Toll barrier lessee near Baddi, District Solan.
3. In compliance to the directions issued by the Hon'ble High Court, notices were issued to the Petitioner and the Respondents. The Ld. Counsel appearing on behalf of the Petitioner stated that he does not want to file any additional documents in support of the claim.
4. The Ld. Advocate appearing on behalf of the Petitioner contended that the petitioner i.e. M/s K.K. Associates, consisted of Baddi Barotiwala, Toll Unit which was allotted the lease of right to collect toll of Baddi- Barotiwala Unit in Revenue District (BBN Baddi) for the toll lease amount of ₹21,72,00,009/- for the year 2023-24. It was further argued by the Ld. Counsel that the adverse weather conditions had affected the revenue district of BBN (Baddi- Barotiwala-Nalagarh). All the major roads connecting and entering the revenue district BBN (Baddi-Barotiwala-Nalagarh) were compromised as the three major bridges at Maranwala, Pinjore, Lohgarh Railway Crossing and Charnia Bridge on Pinjore Baddi National Highway 105 connecting the operational area of the Petitioner firm were either washed away or were rendered unusable for the movement of traffic. The bridges were damaged and the same were closed by the police, administration and NHAI authorities. Only private vehicles were allowed to ply and that



too in the case of an emergency. One of the bridges serving as the bottle neck to entry for the toll barrier of the Petitioner was closed w.e.f. 08.07.2023 being washed away completely. It was further argued that the damage caused by the above aforesaid problem resulted into huge loss in toll collections. Thus, the Petitioner is claiming refund under Condition No. 2.8.1 of the Announcements of the Allotment for Lease of Right to Collect Toll under HP Tolls Act, 1975. The Petitioner has deposited ₹ 21,72,00,009/- and is claiming refund amounting to ₹5,03,04,100/- as per Condition No. 2.8.1 with respect to Baddi-Barotiwala Toll Barrier.

5. The relevant provisions under Section 10 of the HP Tolls Act, 1975 provides that:

“10. Refund.-The Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer in charge of the district either suo-moto or on an application shall, in the prescribed manner, refund to the lessee or any other person, with the prior approval of the Commissioner, any amount of lease money paid by such lessee or person under this Act, if the amount of lease money so paid is in excess of the amount due from him under this Act: Provided that refund shall only be allowed to the lessee in the event of any loss sustained on account of law and order situation, natural calamity or by acts of God or force majeure: Provided further that no refund under this section shall be allowed unless the claim for refund is made within a period of one year from the date on which such claim accrues.”

6. The collateral reading of the relief claimed by the Petitioner vis-a-vis provisions envisaged under Section 10 of the HP Tolls Act shows that the refund so claimed can only be made if the Petitioner has paid the lease money in excess of the amount due from him under the provisions of the Act. In the present case, the Petitioner has not paid any amount in excess of the lease amount.

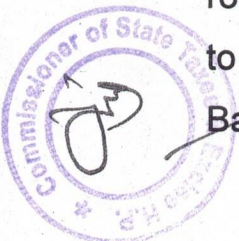
7. The Petitioner is seeking for refund by invoking Condition No. 2.8.1 of the Announcements which provides that:



“2.8.1 In the event of any loss sustained by the toll lessee on account of law and order situation, natural calamity or by acts of God, and force majeure the Dy. Commissioner of State Taxes & Excise or the Asstt. Commissioner of State Taxes & Excise I/C of the district either suo-moto or on an application made to him, with the prior approval of the Commissioner of State Taxes & Excise, Himachal Pradesh may refund any amount of lease money paid by such lessee.”

8. As far as the sustainability of the claim on the basis of alleged Natural Disaster is concerned, it is an admitted fact that the Petitioner has participated in the bid for allotment of lease right to collect toll by auction-cum-tender with open eyes and after fully understanding the terms and conditions of the Announcements voluntarily and out of his own free will and volition and has to abide by the terms and conditions.

9. Clause 2.8.1 of the Toll Announcements deals with the situation where a loss is sustained by the Petitioner on account of law and order situation, natural calamity or by acts of God and Force majeure. In fact, Force Majeure Clause triggers when extraordinary circumstances exist. Significantly, it is evident from the letter No. R/SP/2023-34607 dated 12-09-2023, issued by the Superintendent of Police, revenue District Baddi, that majorly no traffic was hampered / affected due to rain in this Police District. As intimated by the members of truck union, Baddi there was no decline in the numbers of vehicles which were exited from Union Baddi to others State during the months of July and August, 2023. Though they have been using alternate routes, due to the damage of the Toll barrier bridge, Baddi, the traffic was diverted via Barotiwala to Baddi for smooth regulation. As per report of the HPPWD Baddi, certificate dated nil though the roads remained closed for ten days only but this fact is contradictory to the report submitted by the Superintendent of Police District BBN Baddi. In other words, the appellatant suffered loss on account of

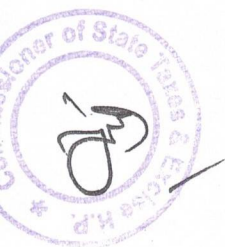


intermittent road closures only of ten days and the remained in business for remaining 355 days. Furthermore, it is settled law that the Force majeure cannot be invoked just because the contract allegedly became financially and commercially onerous or difficult to perform. Therefore, the Force Majeure clause is not applicable in the present case.

10. As per Condition No. 2.8.1, the Petitioner must have sustained loss on account of any of the circumstances mentioned in the said condition for claiming any refund of any amount of lease money. Therefore, sustaining of loss is co-related and has to be read in conjunction with the claim of refund of any amount of lease money.

In other words, sustaining of loss (on account of any of the circumstances specified in Condition No. 2.8.1) is a condition precedent for claiming of refund of any amount of lease money and for invoking condition no. 2.8.1; the loss must have been sustained by the lessee (Petitioner).

The claim recommend by the District respondent authorities varies in terms of amount of refund and is contradictory with the report sent by the Superintendent of Police, Baddi, who is the traffic regulating and controlling authority. Whereas, the respondent authorities have not verified the claim submitted by the petitioner, the claim is not at all refundable in view of the Superintendent of Police BBN Baddi reports that there was no decline in number of vehicles as the vehicles have been using alternate routes and the traffic was diverted via Barotiwala to Baddi for smooth regulation. Thus, there are contradictory reports, in the same matter, by the different District Authorities. The reports recommending refund, therefore, are not sustainable in the eyes of law.



In view of the discussions made hereinabove and after going through the facts and circumstances of the case, I am of the considered view that the Petitioner is not entitled to any relief and the representation, dated 22-04-2024, is liable to be rejected and is rejected, accordingly.

Let the copy of this order be supplied to all concerned. File after completion be consigned on record room.

Announced on 22th Day of January, 2025.


**Commissioner of State Taxes & Excise
Himachal Pradesh**

Endst. No: STE-Reader/CST&E/2025-1600-04 dated: 22-01-2025

Copy is forwarded to:-

- 1) Collector - Cum – Addl. CST&E (SZ), Shimla.
- 2) Dy. CST&E BBN Baddi, District Solan, HP.
- 3) M/S K. K. Associates, Shop No. 7, First Floor, Prakash Complex, near Toll Barrier Baddi, District Solan, Himachal Pradesh through its partner Sh. Gurcharan Singh, son of Sh. Karam Chand, resident of Haripur Sandoli, Tehsil Baddi, District Solan, Himachal Pradesh
- 4) IT Cell, O/o CST&E, H.P., Shimla-09.
- 5) Legal Cell, O/o CST&E, H.P., Shimla-09.



Reader