

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

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

Appeal No. 01 of 2025  
Date of Institution: 22-01-2025  
Date of Order: 26-04-2025

**IN THE MATTER OF: -**

M/s Sarita Devi,  
(L-2, L-14 Licensee for the year 2017-18),  
VPO Hatli, Tehsil Bangana,  
District Una (HP) – 174307.

**.... Appellant**

**Versus**

1. Collector (Excise) -cum-Joint. Commissioner of State Taxes & Excise North Zone – Palampur, Distt. Kangra, (HP).
2. HPBL through its Managing Director SDA Complex Kasumpti, Shimla HP.
3. Dy. Commissioner of State Taxes & Excise Una, District Una, HP.

**....Respondents**

**Parties Represented by:**

1. Sh. Nitin Thakur, Learned Advocate and Sh. Rangeel Singh, Authorised Signatory for the Appellant.
2. Sh. Rajesh Kumar, ACST&E (HPBL) and Sh. Vishal, SA (HPBL) are present on behalf of the HPBL.
3. Smt. Monica Atreya, ACST&E (Legal Cell), is present on behalf of the Respondents No. 1 & 3.

**ORDER**

1. The present order will dispose of the above appeal filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011. The Appellant has preferred the appeal in compliance with the directions of the Hon'ble HP High Court, issued while disposing of Civil Writ Petition No. 15328 of 2024 titled as M/s Sarita Devi Vs State of HP and Ors. The instant



appeal is against the order, dated 04-10-2024, passed in the matter of M/s Sarita Devi by Respondent No. 1 i.e. the Collector (Excise)-cum-Joint Commissioner of State Taxes & Excise, North Zone, Palampur, HP. This order has been passed in compliance with the directions, dated 31-07-2024, issued by the Hon'ble High Court of Himachal Pradesh in CWP No. 6388 of 2024 titled as M/s Sarita Devi Vs State of HP and Ors.

2. Brief facts in the matter are that pursuant to earlier judgment, dated 16-08-2017, delivered by the Hon'ble H.P. High Court, in CWP No. 1673/2017, the Chief Secretary, Government of Himachal Pradesh, on successful bid offer of ₹ 49, 56, 00, 227/- by the Appellant herein above, allotted ninety-six retail excise vends of Una District, for the period 26-07-2017 to 31-03-2018. Accordingly, as per conditions and provisions laid out in the ANNOUNCEMENTS OF EXCISE ALLOTMENTS BY AUCTION-CUM-TENDER FOR THE YEAR 2017-18 (hereinafter referred to as "Announcements") and **the undertaking** given by, before the Hon'ble High Court, the Appellant herein, deposited a sum of ₹ 9, 91, 20, 050/- as advance being 20% of license fee. The liquor vends, thereupon, were made operational on 18-08-2017. But, on dated 07-10-2017, the Appellant, herein, expressed its un-willingness to run the liquor vends. Consequently, the liquor vends were re-auctioned and were re-allotted to M/s Rana Enterprises for a license fee of ₹ 27, 99, 99, 999/- w.e.f. 13.10.2017 to 31-03-2018. On account of above re-allotment (w.e.f. 13.10.2017 to 31-03-2018) of vends, the State suffered a loss of ₹ 11, 34, 04, 895/- and in terms of Condition No. 2.30 of the Announcements, 2017-18, the Respondents department raised this demand against the Appellant. The Appellant herein, however, filed a Writ Petition in the Hon'ble High Court, seeking





compensation from the Excise & Taxation Department on the grounds that it suffered huge losses and also asked for waiving off the penalties and levies. The Hon'ble High Court in the aforesaid CWP No. 1673 of 2017 directed the Principal Secretary (Excise and Taxation), to the Government of Himachal Pradesh, to decide the representation of the petitioner (the Appellant herein) in accordance with the provisions of law, by affording due opportunity of being heard to the Appellant herein. The Principal Secretary, accordingly, after hearing the matter, passed an order on January 20, 2020 to the effect that the Appellant's representation lacks merit, and accordingly rejected the representation. Aggrieved by this decision, the Appellant herein, again, filed CWP No. 7844 of 2022 titled as M/s Sarita Devi Vs State of HP & Ors before the Hon'ble High Court, and the Hon'ble High Court directed the competent authority to decide the appeal. The Chief Secretary, decided the matter vide order dated January 31, 2023, and dismissed the appeal. Dissatisfied with the impugned order, the Appellant once again approached the Hon'ble HP High Court, filing a fresh petition vide CWP No. 6388 of 2024. However, the petitioner (i.e. the Appellant herein) was allowed to withdraw this writ petition with the liberty to avail the statutory remedy of appeal under Section 68 of the HP Excise Act, 2011. The Hon'ble High Court referred the matter to the Joint Commissioner of State Taxes & Excise, North Zone, Palampur, HP, who, after hearing the matter, vide order dated October 4, 2024, dismissed the appeal stating that it lacked merit. Dissatisfied with this decision, the Appellant once again moved to the Hon'ble High Court and filed another writ petition vide CWP No. 15328 of 2024. However, the High Court, *prima facie*, convinced that the petition is not maintainable, allowed the petitioner to withdraw the same with the liberty to file the case before the appellate authority i.e. the Financial



Commissioner (Excise), HP. Additionally, the Hon'ble High Court also directed to decide the case, afresh, strictly in accordance with legal provisions, without being influenced by prior orders. The petitioner (the Appellant herein) has, accordingly filed the instant appeal against the impugned order dated October 4, 2024, passed by the Collector-cum-Joint Commissioner of State Taxes & Excise, North Zone, Palampur and District Kangra (HP).

3. The appeal has been filed with the request and prayer to:

- a) Quash and set aside the order, dated 04-10-2024, passed by the Collector-cum-Joint Commissioner of State Taxes & Excise (NZ) Palampur in case No. 01/2024-25, whereby the Respondent No. 1 has rejected the appeal filed under section 68 (1) of the Act;
- b) Hold and declare all the actions/proceedings initiated in pursuance thereto as illegal, *non-est* and the Respondents not entitled to;
- c) Put on hold any recovery proceedings against the Appellant, pursuant to the purported act of surrender of license;
- d) Direct the Respondents to file affidavits with proof in respect of payments received from Appellant and M/s Rana Enterprises in the year 2017-18;
- e) Refund an amount of ₹45, 84, 54,755/-, and interest thereupon, from the year 2017-18 till its realization in the interest of justice;
- f) Declare the act of causing surrender of license in favour of the Appellant, on the basis of the purported statement recorded on 7/10/2017, as illegal, stating it to be against the statutory mandate of the provisions of the Himachal Pradesh Excise Act, 2011.





4. The arguments on behalf of the Appellant, in support of the request and prayer made in the matter, are as under:

- 1) The Appellant was allotted retail excise liquor vends (L-2/L-14) after negotiations on dated 17-08-2017 for the period from 26-07-2017 to 31-03-2018; but, the vends were made operational only w.e.f. 18-08-2017 at 09:00P.M.
- 2) The Appellant deposited a sum of ₹9, 91, 20, 050/- on 17-08-2017 (20% of the total license fee of ₹49, 56, 00, 227/-) and the vends were made operational on 18-08-2017. Time period provided for the Appellant to run a total of 96 vends was 225 days, but the Appellant could operate only 69 vends for 58 days as the Appellant was not provided any administrative support or protection to open or operate the remaining 27 vends.
- 3) The Appellant received back the stock amounting to ₹1, 65, 67, 949/- and the Appellant made the payments thereto. Payments worth ₹11.46 crores were made in eleven days.
- 4) The Appellant had to pay ₹60, 67, 949/- as a remaining amount for the stock received, but the department withdrew ₹70, 67, 949/- from the deposited FDR and also adjusted remaining amount of ₹79, 32, 051/- of the FDR as excise liability, illegally and without any justification.
- 5) The Appellant paid ₹1, 65, 67, 649/- to M/s Rana Enterprises on 26-08-2017 on the recommendation of Respondents, which was also illegal.
- 6) Respondents delayed the issuance of passes for releasing the quota of liquor which resulted in shortfall of liquor in the vends and in financial loss to Appellant.



- 7) The Respondents deliberately forced the Appellant to surrender the licenses on the basis of the statement recorded intentionally that the Appellant was not interested in running the liquor vends due to its weak financial situation, which was totally wrong.
- 8) The Appellant has not violated any of the provisions under Section 29 to warrant cancellation of L-2/L-14 (A) licenses. It is also the argument of the learned Advocate that as the licenses have been cancelled without enabling provisions, therefore, the recovery notices and red entries made in Appellant's property under Section 71 of the HP Excise Act read with the HP Land Revenue Act, 1954 are illegal.
- 9) As on 13-10-2017, the Appellant had stock worth ₹75, 00,000/- in its licensed vends which the Respondents, on re-allotments of vends, gave to M/s Rana Enterprises, but there is no proof with the Respondents if the Department received payment from M/s Rana Enterprises in lieu of above stock.
- 10) The liquor vends were deliberately re-allotted to M/s Rana Enterprises at very low rate i.e. ₹ 27, 99, 99,999/- and the loss occurred to the Government, on re-allotment, was ordered to be recovered from the Appellant which is illegal and a clear favour of M/s Rana Enterprises.
- 11) The Respondent-Department, first, forfeited the furnished FDR of the Appellant knowingly and then forced it to surrender the licenses for not furnishing the fresh FDR within seven days. The Respondent Department, on the contrary, accommodated M/s Rana Enterprises, who also had not furnished/deposited the FDR of 13% of the bid amount within the prescribed time limit of seven days, again a favour of M/s Rana Enterprises.





5. The representative Smt. Monica Atreya, on behalf of the Respondents No. 1 and 3 argued that the Appellant, on its expressed willingness before the Hon'ble HP High Court, was, specifically allotted the vends in respect of District Una with the undertaking before the Hon'ble High Court and directions from the Hon'ble Court, itself, that the Appellant will pay the admitted license fee w.e.f. 17/07/2017. The Appellant argument that the vends were made operational on 18-08-2017 at 09:00 P.M. is wrong because the retail vends on negotiations were allotted to the Appellant on 17-08-2017 itself. The vends were made operational w.e.f. 18-08-2017 (at 09:00 A.M.) and the Appellant was directed to complete all the formalities. It was incumbent on the Appellant to make the vends operational and complete the formalities as directed by the competent authorities.
6. The representative on behalf of the Respondents No. 1 and 3 argued that the Appellant had failed to pay the dues worth ₹70, 67, 649/- towards lifting of liquor stock from the HPBL and due monthly license fees. The above dues were recovered from the earlier deposited FDR of Rs. 1.5 Crore. Even after forfeiture of the above FDR the dues towards license fee still remained payable by the Appellant. The Appellant was directed to furnish a fresh FDR and pay all the pending license fees. The Appellant failed to comply with the above directions. So, it was on account of non-payment of monthly dues (license fee) and non-payment of fresh Security fee (13% of total License fee) that Excise Passes were not issued to the Appellant. It was hereafter and on the Appellant's expressed unwillingness, to run the vends, on account of its weak financial position (statement on record), that the licenses were withheld.



7. In reply to the arguments that the Appellant licenses were illegally got surrendered by the Respondent No. 3 on the basis of the statement given by its nephew Sh. Shashi Rana, the representative on behalf of the Respondents No. 1 and 3 replied that when the Appellant, as per condition No. 2.27 and 2.28 of the HP Excise Policy for the year 2017-18, was directed to furnish a fresh FDR (13% of the annual License fees) within seven days, the Appellant, first, through above Sh. Shashi Rana and then personally, itself, stating in writing that it was unable to run the liquor vends for the year due to its weak financial position. Hence, the Appellant's licenses were not cancelled on statement given by third party, but on the statement given by the Appellant itself.
8. Replying to the arguments of the Appellant that the liquor vends were re-allotted to M/s Rana Enterprises at a very low price, the representative on behalf of the Respondents No. 1 and 3 replied that the re-auction/re-allotment was conducted as per provisions contained in the Announcements for the year 2017-18. The representative further replied that due to this re-auction/re-allotment procedure the State Government suffered a revenue loss of ₹11.34Cr, which is now recoverable from the Appellant as per Condition No. 2.30 of the HP Excise Announcements 2017-18.
9. As far as HPBL, as Respondent No. 2 is concerned, there are no major grievances expressed by the Appellant against the Respondent i.e. HPBL, except that passes of liquor supply were not issued instantly, but, after a gap of one or two days. In this context Sh. Rajesh, ACST&E, HPBL on behalf of the HPBL replied that they





had issued the passes of liquor within the validity period mentioned in the passes. Hence, there was no delay at their end.

### FINDINGS:

10. I have carefully perused the record in the matter. Reports and replies from the concerned District and Zonal In-Charges were also sought and duly gone through. The instant appeal has been filed to look into the request and prayer of the Appellant in view of arguments adduced in support of request and prayer made, therein.

The first argument of the Appellant is that the vends were made operational on 18-08-2017 at 09:00PM. In this context the judgment dated August 16, 2017, delivered in the matter of Appellant in CWP No. 1673 of 2017 by the Hon'ble HP High Court is relevant wherein vide para 69 of the judgment, the petitioner, itself, had expressed the willingness to accept the contract even without opening the liquor vends for such time the Court was seized of the matter. Para 69 of the Judgment is quoted, verbatim, here below:

69. *The period in issue, for which the offers came to be made by the parties, as from 18-07-2017 up to 31-03-2018. Private parties have clarified that in the event of liquor vend allotted/continued to be allowed to be operated, in terms of the allotment, time spent in the Court shall be taken to be period of contract, not adversely affecting the interests of Revenue. In effect, parties are ready and willing to accept the contract, even without opening the vends, for such time this Court was seized of the matter. [Emphasis supplied].*

Moreover, as per condition No. 10.2 of the HP Excise Policy, 2017-18, "The licensee 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". In view of the undertaking recorded by the Hon'ble HP High Court, no relief can be granted to the Appellant on account of



opening of vends only w.e.f.18-08-2017. As per afore-quoted provisions of the Excise Policy i.e. Announcements for the year 2017-18, no relief can be granted to the Appellant on account of its failure (on the ground that the Appellant was not provided any administrative support or protection to open or operate the above 27 vends) to operate 27 of the allotted 96 vends. It is worth mentioning here that the earlier licensee(s) were running all the ninety-six vends smoothly as far as administration and law and order is concerned. So, the relief claimed by the Appellant on this account, being without merit, is not justified. The relief claimed is also beyond the scope and provisions of the Policy/Announcements. In fact, provisions under Clause 2.30 of the Excise Policy, 2017-18 provide that:

**If any person who has been allotted vend/unit fails to make deposit of the amount of basic license fee/security or on confirmation of the allotment refuses to accept the license, the license may be resold by any prescribed arrangement and such allottee shall not be entitled for refund of any amount he has deposited or shall not be entitled to any other claim. Such defaulting allottee shall further be liable to make up the loss of revenue to the government and it will be recoverable from him as arrear of Land Revenue.**

It is an admitted fact that the Appellant had failed to deposit the payable license fee. Therefore, in view of above underlined provisions of the Clause, the Appellant being defaulter is not entitled for refund of any amount deposited nor is the Appellant entitled for any other claim on account of loss made in the Appeal. In fact, being defaulting allottee, the Appellant, as per provisions of Clause 2.30, is liable to make up the loss of revenue (₹ 11, 37, 89, 277/-) to the Government and the same, is recoverable from it as arrear of land revenue.





11. Another argument and grievance of the Appellant is that the Respondents delayed the issuance of passes for releasing the quota of liquor which resulted in shortfall of liquor in the vends and financial loss, as well, to the Appellant. However, the Respondents, mainly HPBL, replied that the stock of liquor was issued to the Appellant within the validity period of the passes issued. The Respondents during the course of arguments asked the Appellant to quote a single instance of non-issuance of liquor on payment of amount towards stock, to which the Appellant failed to produce any such instance. Thus, as the Appellant was not able to substantiate its grievance, so, the same, being baseless, stands rejected.
12. During the course of arguments the learned advocate for the Appellant submitted that the licenses were cancelled on mere statement given by the Appellant's nephew Sh. Shashi Rana and the Appellant statement that it was not interested in running the liquor vends due to its weak financial situation was recorded only intentionally. Thus, it is the case of the Appellant that its licenses were deliberately surrendered by the Respondent Department. However, perusal of the record on this particular argument of the Appellant reveals facts contrary to the arguments of the Appellant. There is a duly recorded, verified and attested statement of Sh. Shashi Rana, the nephew of the Appellant, expressing the unwillingness, on behalf of the Appellant, to run the licenses. The above statement was reaffirmed and confirmed by the Respondent Department by visiting the residence of the Appellant and recording its statement, which is duly verified and attested, and the said Sh. Shashi Rana has signed this statement in the capacity of witness.



In view of the above facts, the assertions and claim of the Appellant that the act of causing surrender of license is illegal, is not factual and is rather contrary to the records. Hence, the request and prayer of the Appellant to declare the act of causing surrender of the Appellant licenses, on the basis of the purported statement recorded on 07/10/2017, as illegal, is not tenable being without any merit and documentary proof. In fact, there are statements on record which prove that the Appellant, because of its weak financial situation, had expressed the inability to run the vends. Thus, the argument and grievance of the Appellant that it was forced to surrender its licenses is baseless and is accordingly rejected.

13. The learned Advocate for the Appellant vehemently argued that the Appellant has not violated any of the provisions under Section 29 to warrant cancellation of L-2/L-14 (A) licenses. It is also the argument of the learned Advocate that as the licenses were cancelled without enabling provisions, therefore, the recovery notices and red entries made in Appellant's property, under Section 71 of the HP Excise Act read with the HP Land Revenue Act, 1954, are illegal. However, from the perusal of the case history and record, it is revealed that the Appellant had not deposited the due monthly licenses fees for the month of September 2017, failing which the department had to recover the fee from the deposited advance security amounts of ₹ 9,91,20,050/- and ₹1.50 Crore (FDR). Even after adjustment of amounts from the advance payments made by the Appellant, an amount of ₹ 8, 72, 203/- still remained payable by the Appellant towards license fee for the month of September 2017. The Appellant was directed by the Department to pay the pending monthly license fees in full. The Appellant, as per provisions of the Excise Policy, was also directed to pay the security amount equal to 13% of the total





license fees in the shape of cash or FDR or bank guarantee or National Saving Certificate. The Appellant failed to abide by the above directions; thus, by not depositing the payable fee, the Appellant (holder of L-2/L-14 licenses) has clearly breached the provisions contained under Section 29(b) and (c) of the HP Excise Act, 2011, quoted here below for reference:

**29. Power to cancel or suspend licenses etc.—Subject to such restrictions as the State Government may prescribe, the authority granting any lease, license, permit or pass under this Act, may cancel or suspend it—**

- (a) x      x      x      x      x      x      x      x      or  
 (b) if any excise duty or countervailing duty or, other fee payable by the holder thereof is not duly paid; or  
 (c) in the event of any breach by the holder of such lease, license, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such license, permit or pass; or  
 (d) x      x      x      x      x      x      x      x      or  
 (e) x      x      x      x      x      x      x      x      or  
 (f) x      x      x      x      x      x      x      x      x.

From the above quoted provision of the Act, it is amply clear that the Appellant, by not paying the due fee and not depositing the directed advance license fees, violated Section 29(b) and (c) of the Act. Therefore, the pleading of the Appellant that the Department cancelled the licenses without adhering to the provisions of the Act, is not genuine and it is rejected for lacking substance.

For the facts mentioned in the preceding para, the fee recovery proceedings, being in accordance with the provisions of the Act and Excise Policy, have been rightly initiated against the Appellant under Section 71 of the HP Excise Act, 2011, and are accordingly upheld.



14. The other arguments and grievances of the Appellant are against its successor licensee M/s Rana Enterprises, where-in it is alleged that by re-allotting the vends at a price of ₹ 27,99,99,999/- to the latter, the Respondent Department has favoured M/s Rana Enterprises, resulting in revenue loss to the Government and the Department is now, recovering the loss from the Appellant. The Appellant has also alleged that the Department did not enforce the furnishing of FDR of 13% of bid amount within the prescribed time limit of seven days from M/s Rana Enterprises, which is blatant indication of favouritism.

The counsel on behalf of the Respondents submitted that if any sum remains non-paid after due date, the same is recoverable as land revenue arrear and there are amounts recoverable from both the parties i.e. the Appellant and M/s Rana Enterprises. The Appellant also seeks filing of affidavits from the Respondents in respect of payment received from Appellant and M/s Rana Enterprises in the year 2017-18. In my considered opinion, the filing of the affidavit, as requested by the Appellant, is not required in view of admission by the Respondents that amounts worth ₹ 11, 37, 89, 277/- from the Appellant and ₹1, 78, 37, 659/- from M/s Rana Enterprises, as arrears, are still recoverable.

Also, as the allegations have been made against M/s Rana Enterprises (without arraying it as party in the appeal along with other Respondents), therefore, no unilateral order vis-à-vis M/s Rana Enterprises can be passed in the matter.

15. Findings given in paras 9-14, above, lead to the inevitable conclusion that the grievance of the Appellant that, for the want of settlement of the present matter, it has suffered for the last seven years, is on account of Appellant's own acts of omissions and





commissions. First, the Appellant filed a Civil Writ Petition vide No.1673 of 2017 in the Hon'ble High Court of HP, pleading, therein, that despite quoting higher bid price it was not allotted the vends in respect of Una District. The Hon'ble High Court of HP, vide para 70 of the judgment, observed as under:

***70. Thus, on all counts, we find interests of the State stands adequately protected. In fact, State stands to benefit with the increase of the offer by the present petitioner to the tune of ₹3.1 crores. Also, petitioner has agreed to deposit 20% of the bid amount. This is also in public interest.***

It was on this offer of increased bid amount, by ₹3.1 crores and further offer of the Appellant to deposit 20% of the bid amount in advance, that the Hon'ble HP High Court set aside the earlier allotment made to M/s Rana Enterprises on offered bid of ₹46.51 crores. Thereafter, the Appellant, in violation of the provisions of the Act and Excise Policy/Announcements and observations of the Hon'ble High Court, itself failed to pay the scheduled and due monthly license fee. Not only the Appellant failed to pay the monthly dues, it also failed to deposit the mandatory Security Funds. In fact the Appellant, itself, expressed in writing, the unwillingness to run the vends due to financial weakness. Because of its failure to run the vends, the vends had to be re-allotted and in the process State suffered a loss of 11, 34, 04, 895/-. The above loss, as per quoted (para 10 of this order) Condition No. 2.30 of the Policy (2017-18) is recoverable from the Appellant. As per provisions of the Condition ibid, the Appellant is not entitled for refund of any amount deposited, nor is the Appellant entitled to any other claim. In fact, on non-payment of above dues, the same are recoverable from it as arrear of land revenue. Therefore, the request of the Appellant to drop notices of recovery and delete the red entries made in the property,



being contrary to the provisions of the Announcements for the year 2017-18, cannot be acceded to.

### FINAL ORDER:

16. In view of above findings, it is clear that the Appellant could not open and operate the liquor vends efficiently. None of the arguments and requests of the Appellant have any merit nor have the related support of the provisions of the Act and Excise Policy/Announcements for the year 2017-18 and therefore, the Appeal being devoid of merit is rejected and the order dated 04-10-2024 passed by the Respondent No. 1 i.e. the Collector (Excise)-cum-Joint Commissioner of State Taxes & Excise, North Zone Palampur, HP is upheld.

Pending miscellaneous application(s), if any, also stand disposed of.

Inform all concerned accordingly. File after completion be consigned to record room.



  
**Financial Commissioner (Excise),  
Himachal Pradesh Shimla-09**

Endst. No. EXN/FC(E)-cum-CST&E(E)/Reader/2025- 10832-38 Dated: 26-04-2025

Copy forwarded for information to: -

1. M/s Sarita Devi (L-2, L-14 Licensee for the year 2017-18), VPO Hatli, Tehsil Bangana, District Una, HP-174307.
2. Collector-cum- Jt. Commissioner State Taxes & Excise (North Zone), Palampur, District Kangra (HP).
3. Dy. Commissioner State Taxes & Excise, District Una, HP.
4. Himachal Pradesh Beverage Limited Shimla, HP.
5. Legal Cell (HQ).
- ✓ 6. IT Cell (HQ).
7. Guard file.



**Reader**