

**BEFORE**  
**THE COMMISSIONER OF STATE TAXES AND EXCISE**  
**HIMACHAL PRADESH, SHIMLA**

Appeal No.:99/2016-17  
Date of Institution: 17-04-2017  
Date of Order: 23-06-2023

**In the matter of: -**

M/s Ram Chander Pal Singh Thakur  
s/o Shri Gian Singh r/o Village & P.O.  
Chandi, tehsil & District Chamba  
(Licensee L-14 Unit Sahoo, Chamba(Year 2016-17).....**Applicant**

**Versus**

State of Himachal Pradesh & Ors .....**Respondent**

**Present: -**

1. Shri Arvind Sharma, Learned Advocate for the Applicant.
2. Shri Ramesh Sharma, Learned Advocate for the HPBL.
3. Shri Sandeep Mandyal, Senior Law Officer, for the Respondent.

**ORDER**

The instant matter has arisen in consequence to representations dated 07.04.2017, 05-01-2019 received from Licensee Shri Ram Chander Pal Singh Thakur s/o Shri Gian Singh r/o Village & P.O. Chandi, tehsil & District Chamba, Licensee L-14 Unit Sahoo, Chamba, Year 2016-17(hereinafter referred to as "the Applicant"). The Applicant vide application dated 07.04.2017 requests for disposal of his representation in view of the judgment in CWP No. 1790/16 titles as Rajinder Singh Negi Vs State of H.P. accordingly notices of this application were issued to the Respondent and thereafter the respective parties were heard at length.

2. Brief facts in the matter are that as per Announcements of the Excise Allotment/Tenders for the year 2016-2017, the Applicant was the licensee for the year 2016-2017 for the Unit Code-8 Sahoo in District Chamba, with six retail vends for the purpose of retail sale of Indian Made Foreign Liquor (IMFL) and Country Liquor (CL). The case of the Applicant is that due to shortage of supply of liquor by the





HPBL, the Applicant suffered losses. The Applicant has also put in claim on account of transportation costs, cost on account of breakage and overhead expenses. It is borne from record and arguments of the Applicant that there are dues pending against the Applicant on account of License Fee, interest and penalty.

3. During the course of arguments in the matter Learned Counsel for the Applicant submitted that initially wholesale vends and thereafter, the HPBL failed to procure and provide liquor equivalent to the MGQ (Minimum Guarantee Quota). It was the HPBL who in fact was responsible for the scarcity and non-providing of liquor to the retail licensees. Besides this, the H.P. Beverages Limited, initially, set up only three depots for the entire State and these depots were situated at far of places. On account of this, the Applicant was burdened with the transportation costs and cost on account of breakage. Such contingency of overhead expenses was not envisaged in the announcement of 2016-2017. Accordingly, the Applicant has put in, before the Department, a total claim of Rs. 17, 62, 870/- as under:

Shortfall of Liquor on account of Non-supply of Liquor:	Rs. 30, 78, 887/-
(Less) Pending Licence Fee	Rs. 18, 16, 017/-
Transportation Cost	Rs. 1, 50, 000/-
Breakage of Bottles	Rs. 50, 000/-
Overhead & Establishment Charges	Rs. 3, 00, 000/-
<b>Total Claim</b>	<b>Rs. 17, 62, 870/-</b>

4. It was further argued that the Hon'ble High Court in CWP No. 1790/2016 titled as "*M/s Rajinder Negi Vs State of HP and other*" (along with other connected matters), in a similar case, has specifically directed the Respondents to provide the benefit of county liquor as well as IMFS (Indian Made Foreign Spirit). The Applicant also seeks calling of the record of the H.P. Beverage Limited so that his claim of the loss suffered by him on account of acts of the Department as well as H.P. Beverage Limited is verified from the record of the HPBL. As per submissions of the Applicant, for the





acts and omissions of the Respondents, especially the HPBL, the short fall be calculated and the applicant be given the claim to which he is entitled. The applicant seeks the waiving of the balance of unpaid licensee fees as also interest and penalty (if any). He requests that the fixed deposit receipt and the security furnished by the applicant be released. Applicant also requests that securities and deposits may not be cashed in during the pendency of the matter.

5. Per contra, it was argued on behalf of the State that the Applicant did not establish on record that the Applicant was provided less quantity of quota especially qua the specific brands of country liquor. It was further argued that the Clause 6.5 of the Announcements was applicable to Country liquor and not to IMFS. It was further argued that the claim for providing compensation or claim for damages is beyond the ambit and scope of the Clause 6.5 of the Announcements.
6. Ld. Counsels for the Respondents strongly argued that in this case, clause 6.5 is not applicable at all as the petitioner has not deposited entire license fee and the dues of the Department are still pending and hence, question of refund does not arise at all.
7. It was further argued on behalf of the State that the Applicant had participated in the open tender process with open eyes and had accepted all terms and conditions of the Excise Announcements and hence the Applicant cannot raise any claim against the provisions of the Tender Allotment.
8. It was further argued on behalf of the State that the Applicant did not place the demand in time before the Respondent(s) especially HPBL with reference to extra brands etc. The Applicant did not file any complaint before the Respondents especially the HPBL, therefore, the Applicant failed to prove any grievance as per the terms and conditions of the Announcements.





9. I have heard both the parties in the matter and examined the record with minute detail. In nutshell, the case of the Applicant is that due to shortage of supply of liquor by the HPBL, the Applicant suffered losses. The Applicant has also put in claim on account of transportation costs, cost on account of breakage and overhead expenses. It is borne from record and arguments of the Applicant that there are dues pending against the Applicant on account of License Fee, interest and penalty.
10. Notably, Clause 2.38 of the Announcements regarding the setting up of HPBL was already incorporated in the Announcements. The Clause 2.38 is reproduced herein below for the sake of brevity:

**"2.38. A company will be set up under the Himachal Pradesh Excise and Taxation Department which shall be exclusively responsible for the procurement of all kinds of liquor i.e. Country Liquor, IMFS, Beer, Wine and RTD etc. in the State and shall further supply liquor so procured as wholesale-licensee to all the retail vends i.e. L-2, L-14 & L-14A etc. during the year 2016-17. After the Company starts its operation, the retail licensees shall lift liquor i.e. Country Liquor, IMFS, Beer, Wine and RTD etc. only from the Company's licensed and prescribed premises."**

The applicant participated in the tender process voluntarily out of his free will and volition (which in fact was made known to him even before initiating the tender process) after fully understanding the terms and conditions especially the nature and effect of the Clause 2.38 of the Announcements. Thus, the Applicant was bound to lift the liquor i.e. country liquor etc. from the company's licensed and prescribed premises.

11. Even if Minimum Guaranteed Quota remained unlifted during any month, the Clause 4.4(d) of the Announcements, as under, had specific provisions of lifting in the subsequent month any unlifted quota of the month:

**"4.4(d) In case the licensee is unable to lift the Minimum Guaranteed Quota within a month he shall still be required to pay the full installment of licence fee for that month which shall be paid by the last day of the month provided that the last installment for the month of March shall be paid in full by the licensee by 15<sup>th</sup> of March. However, less quota lifted in any**





month can also be issued in the subsequent month on application by the licensee in respect of which the license fee stands deposited."

Conversely, the Clause 4.4(e) of the Announcements provides for adjustment of excess of MGQ in the subsequent month.

Thus, the collateral reading of 4.4 (d) and 4.4 (e) clearly shows that if the Applicant/Licensee is unable to lift the MGQ within a month or lifted MGQ in excess (of quota) then despite of that fact, the Applicant is still required to pay full installment of license fee for that month, however, the less quota lifted in any month can also be issued in the subsequent month on an application by the Applicant/Licensee in respect of which license fee stood deposited or in case the Applicant has lifted more than MGQ then the Applicant/licensee is at liberty to adjust such excess quota in subsequent month, as the case may be.

Thus, if at all the Applicant had any grievance regarding the shortage of supply of any liquor than the MGQ; the Applicant could have easily redressed his grievance by invoking Clause 4.4(d) of the Announcements. There is nothing on record or in the pleading of the Applicant, whatsoever, that after the alleged shortage of supply of the liquor, the Applicant has made such application. Therefore, the Applicant, in the absence of any Application/information made in terms of Clause 4.4(d) of the Announcements is estopped from demanding any claim/relief of the proportionate license fee by his own act, conduct and omission.

12. Similarly, regarding claim on account of transportation, breakage and overhead expenses, provisions under the Clause 6.5 of the Announcements do not entitle the Applicant to any such claim/relief:

"Licensees shall not be entitled to any compensation or claim for damages if the supplies of country liquor to him fall short of the quota fixed in respect of his vend or vends. He will, however, be entitled to the refund of the proportionate license fee in such contingency provided he establishes to the satisfaction of the Excise and Taxation Commissioner that such a shortfall of supplies did not occur because of any fault on his own part. Such claim for refund shall be preferred and considered only after the close of the financial year."





It is also evident from the Clause 6.5 of the Announcements that the Applicant is not entitled to any claim in respect of shortfall in supplies of IMFS. In these circumstances, the grievances of the Applicant are only to be redressed within the parameters of law and in the present case in accordance with the Announcements for the year 2016-17. These Announcements has force of the law. It is settled law that "**Expressio Unious Est Exclusio Alterius**" i.e. where a statute requires to do a certain thing in a certain way, the things must be done in that way and following other courses is not permissible.

In this background, since Clause 6.5 of the Announcements only deals with country liquor, therefore, no benefit regarding IMFS can be given to the Applicant by invoking Clause 6.5, itself.

In other words, the scope of Clause 6.5 of the Announcements cannot be extended so as to include IMFS in the same that too in the absence of any specific provisions. Furthermore, the bare perusal of the Clause 6.5 clearly provides that the Applicant shall not be entitled to any compensation or claim for damages if the supply of country liquor for short of quota fixed in respect of his vend/vends. Thus, the bare perusal of the Clause 6.5 of the Announcements shows that providing of any relief for compensation and claim for damages is beyond the ambit and scope of the Clause 6.5 of the Announcements.

13. I am in agreement with the arguments of the Counsels for the Respondent that even otherwise as the petitioner has not deposited entire license fee and the dues of the Department are still pending and hence, question of refund does not arise at all in the present case. Since in the present case, License fee worth Rs. 19, 31, 146/- has not been deposited by the Applicant, request for refund, therefore, is totally in contravention to the Excise Announcement 2016-17.



14. Notwithstanding anything discussed in preceding para, the proviso to Clause 6.5 itself shows that burden of proof lies upon the Applicant to establish that there is shortfall of the supplies and



further this shortfall did not occur because of any fault on the part of the Applicant. Thus, it is crystal clear from the proviso itself that the applicant has to prove that:

- a) There is shortfall of supplies;
- b) Such shortfall of supplies did not occur because of any fault on his part. As far as alleged shortage of supply is concerned,

Regarding plea taken by the Petitioner that the Petitioner was taking the supply from the L-1 Licensees and they were not having sufficient stock of liquor to supply the liquor to the retailer, cautious perusal of record available shows that existing L-1 Licensees were having sufficient stock during the month of April, May & June as pointed out by the Ld. Counsel for the respondent. It is a matter of fact that even L-1 licensee had to surrender huge quantity of stock to the Collector (Excise) when Himachal Pradesh Beverages Limited started its operations. Not only this, in fact, some of L-1 Licensees made a petition before Hon'ble High Court regarding stocks available with them and considering the stocks available with the L-1 licensees, Hon'ble Himachal Pradesh High Court in the CWP No.-1503/2016 in the matter of M/s Neelkanth Wine V/s State of H.P. ordered the State Government that :-

*Respondent-State in the process of giving effect to Annexure P-3, P-4 and P-5 may offer grace period to the existing L-1 licensees/ petitioners to enable them to exhaust their stocks, if any.*

Or

*Respondent-State may itself consider purchasing stock lying with the L-1 licensees instead of procuring the same from manufacturer directly;*

Or

*Allow petitioners as well as L-1 licensees to sell their existing stock to retail licensees.*

Or

*Apart from the above, respondents may refund an amount of Rs.6 lacs, if any, deposited on account of renewal fee for whole year, after making necessary adjustments, if any.*

Reading of the above makes it amply clear that sufficient stock was lying with L-1 before the commencement of the HPBL, which has been specifically referred to, in the order of the Hon'ble H.P. High Court. Complying with the order of the Hon'ble H.P. High Court, entire surrendered stock of the L-1 was therefore, actually sold through the HPBL from 1<sup>st</sup> July. Even record available in the office shows that





sufficient stock was available with the L-1 licenses during the period mentioned in the petition. Considering all these points, plea taken by the Petitioner seems to be completely devoid of merit.

Furthermore, Clause 10.2 of the Announcements provides that "the licensee shall have to make their own arrangement for procuring liquor". In this background, the Applicant is not entitled to any refund in terms of Clause 6.5 of the Announcements.

Also, Firstly, it is evident from the record that the Applicant, as per provisions of Clause 4.4 (d) of the Announcements, did not make any application for issuance of less quota lifted in any month in the subsequent month in respect of which the license fee stood already deposited;

Secondly, it is evident from the record that the applicant has not placed the written demand before the Respondent (s) with respect to the extra brands/liquor in as much as the application was required to be made in the subsequent month for making good the deficiency of less quota in the previous month, thus adverse inference ought to have been drawn against the applicant.

Lastly, the Applicant has specifically pleaded in the present application that the Applicant used to get liquor from wholesale liquor vends at Chamba and Nagrota Bagwan, District Kangra.

15. Also, it is evident from the record that the HPBL had opened proper depot for supply of liquor of all brands which were approved by the Department and the Applicant and the other licensees/retailers/vendors were required to lift the liquor from any of these depots as per their demands in the State of H.P. There is nothing on the record to show that the Applicant had put in his demand in the manner prescribed under Clause 4.4(d) for some more brands and stock which were not available in the depot. Furthermore, though as per the Excise Announcements, it was the prerogative of the State to decide on the mode of supply and State of HP was within its jurisdiction to decide its policy matter. Furthermore, it is evident from the record that the HPBL obtained 16 wholesale licensees for sale of country liquor and IMFS in the month of July





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itself and 24 more licensees have been procured by the HPBL in the month of August, 2016 and these licensees were spread across the State.

Thus, no case of remittance of the pending license fee is made out in the absence of support from statute and provisions of the Announcements.

16. In view of the discussion made hereinabove, I am of the considered opinion that there is no merit in the application and the same is liable to be dismissed and is accordingly dismissed. Let all the parties be informed accordingly. File may be consigned to the record room after completion.



Announced on 23<sup>rd</sup> June, 2023

Commissioner of State Taxes & Excise  
Himachal Pradesh

Endst. No. DOST&E/CoST&E-Reader/2022-17877-82

Copy forwarded to: -

Dt. 23-06-2023

1. M/s Ram Chander Pal Singh Thakur s/o Shri Gian Singh r/o Village & P.O. Chandi, tehsil & District Chamba Licensee L-14 Unit Sahoo, Chamba (Year 2016-17).
2. Himachal Pradesh Beverages Limited, through its Managing Director, Himachal Pradesh, SDA Complex, Block No. 30, Shimla-9.
3. Collector Excise, North Zone, Palampur District Kangra.
4. Dy. C (ST&E), District Chamba.
5. Shri Sandeep Mandyal Sr. Law Officer.
- ✓ 6. IT Cell.

Reader to the  
Commissioner of State Taxes & Excise  
Himachal Pradesh