

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

(BLOCK NO. 30, SDA COMPLEX SHIMLA-09)

Appeal No. 19 of 2021-22

OMA No. 01 in 19 of 2021-22

Date of Institution: 22-02-2022

Date of Order: 28-05-2022

IN THE MATTER OF: -

M/s Saroj Kumari,
License L-13, Paddar, Near Chamunda Devi,
District Kangra, (H.P.) **Appellant**

Vs

Collector (Excise)-cum- Joint Commissioner
State Taxes & Excise, North Zone, Palampur,
District Kangra (H.P.) **Respondent**

Present:

1. S/Shri Sanjeev Bhushan Sr. Advocate and Rajesh Kumar,
Advocate for the Appellant.
2. Shri Rakesh Rana, Deputy Director (Legal Cell) for
Respondent.

ORDER

in

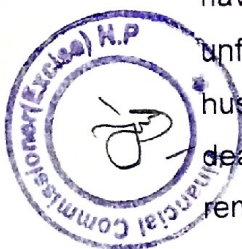
**Appeal under section 68(2) of the Himachal Pradesh
Excise Act, 2011**

1. This is an appeal filed by the Appellant M/s Saroj Kumari, Licensee L-13, Paddar, near Chamunda Devi, District Kangra. The Appellant is aggrieved by the order dated 09-11-2021, passed by the Collector (Excise)-cum- Joint Commissioner State Taxes & Excise, North Zone, Palampur, District Kangra (H.P.), whereby the Respondent has not only cancelled the License granted to the Appellant under the HP Excise Act, 2011 (hereinafter referred to as the Act), but has also imposed a demand of ₹ 1, 19, 80, 451/- up on the Appellant.



2. The briefs in the matter are that the Appellant was granted L-13 license for the years 2019-20 and 2020-21. On dated 12-08-2021, the concerned Dharamshala-1 Circle staff comprising of ACST& Excise Circle Sh. Navjot Sharma, ASTEO Circle Dharamshala-I Sh. Virender Singh, ASTEO (Excise) Kumari Rishika and Excise Peon Sh. Kishori Lal, conducted an inspection of the above L-13 Premises at Paddar pertaining to the Appellant (M/s Saroj Kumari). The Licensee/Appellant herself along with her employee/worker/representative Sh. Babli Kumar were present at the above premises at the time of inspection. After taking stock position (physically) and as per stock register, the stock of country liquor was found less by 7499.5 boxes. The inspecting team asked her to explain the above difference in stock. Not finding the reply to be satisfactory, the Dy. Commissioner (State Taxes & Excise), Kangra forwarded the matter above to the concerned Zonal Collector (Excise), the Respondent above. The Respondent after hearing the Appellant created a demand of ₹ 1, 19, 95, 451/- only which included a penalty of ₹ 5, 000/- in lieu of retaining of License L-13 otherwise cancelled vide order dated 09-11-2021. The Appellant, felt aggrieved, is in appeal against the above order of the Respondent.

3. Shri Sanjeev Bhushan Ld. Sr. Advocate submitted for the Appellant that it was Shri Madan Lal Kapoor, the late husband of the Appellant who was in the trade of country liquor (CL) and foreign liquor (IMFL) even prior to his marriage with the Appellant; and he was holding various other licenses including L-14. After their marriage, Shri Madan Lal Kapoor took one L-13 License for Paddar in the name of his wife, the Appellant. Ld. Senior Counsel submitted that it was Shri Madan Lal Kapoor, the Appellant husband, who, having full knowledge of business was looking after the same, but unfortunately her husband died on 01.06.2021. Since, it was her husband who was looking after the business, therefore, after the death of her husband on 01.06.2021, and even before that, since he remained admitted in RPGMC Hospital Tanda, District Kangra for a



period of more than ten days, there was nobody to look after her business. After the unfortunate death of the husband, the Appellant had to perform all the rituals of her late husband. Ld. Senior Advocate submitted that after recovering from the initial shocks, the Appellant tried to understand and look after the business. Ld. Sr. Advocate, further submitted that for a period of more than two and a half months, on account of emergent situation above, the business remained in the hands of the employees and certain other persons. When the Appellant started understanding the business, she found some foul play. It was found that during the night time some liquor boxes were removed from the Appellant's licensed premises. The Appellant made a detailed complaint, upon this, to the SP Kangra on 29th July, 2021, but no immediate action was taken by the police. The Appellant did not know about other intricacies of the business, thus, was solely dependent upon the police after having given the information to the police. A delayed FIR was registered by the police bearing FIR No. 113/2021 at Police Station Dharamshala 13.08.2021.

4. Ld. Sr. Advocate further added that it appears that the Respondent Department also became vigilant after coming to know about the above complaint being made by the Appellant and as such the Respondent Department inspected the Appellant L-13 premises on 12.08.2021. Ld Sr. Advocate further mentioned that the complaint to the Police was made by the Appellant much prior to this on 29th July, 2021. On the basis of said inspection, a notice was issued to the Appellant on 31st August, 2021, informing the Appellant that a stock of 7499.5 cases of CL was found less in her licensed premises. The premises of the Appellant along with the lying stock in the premises were, there upon, sealed by the Department. The Respondent vide notice dated 31st August, 2021, asked the Appellant to appear before the Respondent on 8th September, 2021; accordingly, the Appellant appeared and submitted her detailed reply. Her reply was not considered and the Respondent imposed a total demand of ₹ 1, 19, 95, 451/- only which besides due duties



and levies included a penalty of ₹ 5, 000/- in lieu of retaining of License L-13 which otherwise stood cancelled vide order dated 09-11-2021.

5. Ld. Sr. Advocate argued that in order to recover the Excise Duty and other levies, the Department should have acted promptly and vigilantly. Ld. Sr. Advocate further added that once the L-13 premises were sealed, the stock lying in the premises should have been put to auction immediately; but it was not done. Ld. Sr. Advocate further argued that the Respondent passed an order dated 09.11.2021 ordering huge recoveries to the tune of Rs. 1,19, 80, 451/-. Ld. Sr. Advocate felt aggrieved that had the Respondent auctioned the seized liquor immediately, the due amount could have been much less. Instead, on 25th of November, 2021, another notice was issued to the Appellant to pay the dues with the stock still not sold. Ld. Sr. Advocate argued that in due course the value of seized liquor got reduced drastically. Ld. Sr. Advocate submitted that substantive recoveries could have been made by auctioning the stock lying in the premises immediately as the stock lying in the premises was having a value of more than seventy lakhs. It was also submitted that on account of the delay, as has been caused by the Department, the loss to the exchequer is rather being attributed to the Appellant. Ld. Sr. Counsel also submitted that the Appellant did not violate any of the provisions of the Act. Ld. Counsel vehemently argued that rather it was on account of virtual theft of liquor under compelling and extraordinary circumstances that her husband had expired. Even prior to his death, the Appellant had to attend her husband in hospital for a period of more than fifteen days. Since the death of her husband on account of COVID, the Appellant remained quarantined and thereafter she had to complete the rituals. It was during these two and half months' hard period that theft of the liquor stock took place. When the Appellant came to know about this, the police was immediately informed, narrated Ld. Counsel. Ld. Sr. Advocate prayed that under these testing circumstances, ordering



recovery is absolutely incorrect and all these aspects were explained before the authority below, too, but have not been considered at all.

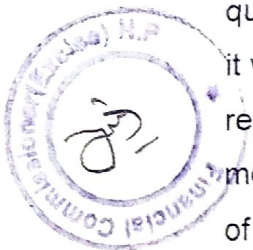
6. Narrating agonies of the Appellant, Ld. Sr. Advocate also submitted that apart from ordering such huge recovery, the Appellant Bank account, in Central Bank of India, has also been freezed on the directions of the Respondent. Ld Advocate submitted that whatever money, including the money which the Appellant received on account of the insurance of the husband and a few other savings, which was lying in this bank account, has been freezed. On account of freezing of the account, the entire family, comprising of two small children, is at the verge of starvation. Further, it was also submitted that the Appellant is looking after her aged father and mother-in-law who are ninety and seventy years respectively.

7. Shri Rakesh Rana, Deputy Director (Legal) for the Respondent replied that the Collector (Excise) North Zone Palampur, the Respondent, after hearing the Appellant Smt. Saroj Kumari has rightly raised a demand of ₹1, 19, 95, 451.00 (₹ One crore nineteen lacs ninety five thousands four hundred fifty one only) on account of License fee, Addl. Licensee fee, ETD Dev. Fund, Covid Cess and penalty. There has been the gross violation of the provisions of the Act, applicable Rules and Orders, and also the terms and conditions of the license. In order to prevent any further loss and to secure the escaped Government dues, the premises had to be sealed and the same was done in the presence of the Licensee herself. Besides, the Licensee is not showing any willingness to pay the demand amount Rs 1, 19, 80, 451/-. Stock of Country Liquor lying in the L-13 had to be sealed and Appellant Banking Account had to be freezed to secure the Government dues. Auction of the seized liquor could not be concluded for the lack of interest on the part of the eligible prospective buyers.



8. I have heard the arguments of the Appellant and reply there to as submitted by the Respondent. I have also gone through the entire case record and have perused the same carefully. The first of the grievances of the Appellant is that L-13 License for Paddar was taken by the Appellant husband (Late Shri Madan Lal) in the name of his wife (Smt. Saroj Kumari Appellant-Licensee) and it was the husband of the Appellant who was looking after the business till his death. On this account, the Appellant had no knowledge of the business. But, it is an admitted and documented fact that the license in Form L-13 has been issued in the name of Smt. Saroj Kumari, Appellant-licensee has entered into agreement with the Department, and further agreed to the terms and conditions of the license. On the face of record, it is undisputed that Smt. Saroj Kumari being L-13 Licensee was solely bound to abide by the applicable Act, Rules and Orders. Law is neither lenient to business novices nor can the law press upon the proxies for liabilities. Licensee him/herself is responsible for the acts of omission and commission by his/her employees as the burden to abide by the provisions of Act is upon the licensee solely. Notwithstanding the misfortune that have fallen on the Appellant, the fact remains that liquor has been removed from the licensed premises of the Appellant without payment of due fee and duties and the lapse above on part of the Appellant above is an offence under the HP Excise Act, 2011.

9. The other grievance of the Appellant is that the remaining quantity of liquor should have been put to auction immediately when it was found during inspection that 7499.5 cases of liquor have been removed illegally. This argument of the Ld. Sr. Advocate is not on merit as the stock lying in the premises was legitimate. The auction of the liquor, legally stocked, is the last remedy when the pending dues are not paid in normal course and seized goods and property are auctioned only if recoveries are not possible in normal course. Auction proceeding are time consuming process and could not have been first option; for, before the disposal of any seized liquor under the law, set of procedures needs to be followed, which takes



substantial time for its conclusion. Despite this fact, it is revealed from the record that efforts have been made by the Respondent Department to put to auction the seized liquor, but the same could not be completed for the lack of interest by the licensees.

10. It was also argued for the Appellant that inspection of the vend was conducted by the respondent Department only after the Department came to know about the complaint of liquor theft lodged by the Appellant herself with the Police. However, the Appellant license premises were inspected as per prescribed norms and provisions of the HP Excise Act, 2011 read with HP Liquor License Rules 1986. The inspection of excise vends is a regular and mandatory feature, instructions regarding which are issued from the Commissioner of State Taxes & Excise-, HP. It was found during the course of this regular inspection of the premises that liquor from the L-13 wholesale vend has been transported and transferred without prescribed documents and without payment of due Duties and Fees payable thereon under section 36 of the Act. The above transport and transfer of stock of country liquor without prescribed documents (Permit in Form L-32 and Pass in Form L-34) is prohibited under sections 21, 22 and 23 of the Act and is punishable offence under sections 39 and 43 of the Act. The above offences, admittedly, have been committed by the employee(s) of the Appellant, therefore, as per provisions of the section 57 of the Act the offence above is liable to be treated as if the same has been committed by the Appellant herself being L-13 License holder. Therefore, the above argument, would not absolve the Appellant from paying the Government dues in respect of the liquor removed unlawfully.

11. Lastly, there was a prayer from the Appellant that her bank accounts may be de-freezed as she is facing hardship as she has to look after her two children and aged father and mother-in-law. From the record available in the matter it is found that the dues to be recovered are huge. It is also revealed from the record that the Appellant has not shown any interest to deposit the Government



dues. She has deliberately failed to deposit the due sum on demand. Therefore, the freezed bank account cannot not be allowed to be de-freezed in the larger interest of Government revenue.

12. Final Order:

For the aforesaid findings recorded in paras 8 to 11 above, the Appellant has failed to establish that all due and reasonable precautions were exercised by her to prevent the commission of such offence, therefore, as is envisaged under section 57 of the Act quoted below, the Appellant is liable to punishment for offences punishable under section 43 committed by any person in her employ or acting on her behalf as if she had herself committed the same:

57. Liability of employer for offence committed by the employee or agent.—*The holder of a license, permit or pass under this Act as well as the actual offender, shall be liable to punishment for any offence punishable under sections 26, 39, 40, 43 or 44 committed by any person in his employ or acting on his behalf as if he had himself committed the same, unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.*

The prayer and contentions of the Appellant are more of the nature of soliciting sympathy rather than merit and support of law. Accordingly, the present Appeal fails on grounds of merit and support from the Act. The Appeal is, thus, liable to be dismissed as rejected and is accordingly dismissed. The impugned order passed by the Respondent, accordingly, is upheld to be legal, proper and in order. Dues pending against the Appellant are to be recovered as per provisions of the Sections 71 and, 73 (1) and (2) of the Act.



This order shall also dispose of any other miscellaneous application (OMA) filed in the matter.

Inform the parties accordingly. Files after completion be consigned to records. Let the copy of this order be supplied to all concerned. The file after due completion be consigned to record

M/s Saroj Kumari, L-13 Paddar Vs Collector (Excise), North Zone Palampur
Appeal No. 19/2021-22

room. Record requisitioned in the matter from the office of the
Respondent authority and authorities below be returned.

Announced on 28th of May, 2022




Financial Commissioner (Excise)
Himachal Pradesh

Enst. No. DoST&E/FC (Excise)/Reader/2022-23/-15797-801 Dated: 28-05-2022

Copy forwarded for information to:--

1. M/s Saroj Kumari, Licensee (Year 2019-20) L-13 Paddar near Chamunda Devi, District Kangra, (HP).
2. Collector (Excise)-cum-Jt. Commissioner (ST&E), North Zone, Kangra, HP.
3. Dy. Commissioner (ST&E), Hamirpur, District Hamirpur, H.P.
4. Shri Rajesh Kumar Advocate, Chamber No. 406, HP High Court, Shimla-01.
5. Shri Rakesh Rana, Deputy Director, Legal Cell, HQ.


Reader

