

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

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

Representation No. 01/2023

Date of Institution: 01-09-2023

Date of Decision: 13-09-2023

(In Compliance with Oder Dated 29-08-2023 of the Hon'ble HP High Court HP

IN CWP No. 5909 of 2023)

In the matter of:-

M/s R.R. Bottlers and Distillers

Goel Jamala, Nalagarh

.....Applicant

Versus

State of Himachal Pradesh

..... Respondent

Present:-

1. Shri Dikken Kumar Ld. Advocate along with Shri Sanjeev Rana, authorised signatory of the Applicant firm
2. Smt. Monica Attreya, ACST&E, Legal Cell along with S/Shri Amit Kumar, ASTE&O, O/o Collector South Zone and Daya Ram Bhardwaj, STE&O O/o BBN, Baddi for the Department.

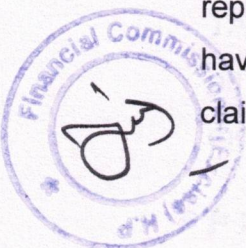
ORDER

1. This representation has come up before this forum in compliance with directions, vide order dated 29-08-2023, of the Hon'ble HP High Court, whereby while disposing of CWP No. 5909 of 2023 the Hon'ble Court was pleased to direct the undersigned to consider and decide the representation of the petitioner (Annexure P-5) expeditiously, preferably within a period of one week. There were directions from the Hon'ble Court to afford opportunity of hearing to the petitioner and pass a detailed order thereafter. The applicant feeling aggrieved pleaded before the Hon'ble Court that despite having deposited entire dues under the HP Excise Act and HP VAT Act, 2005, its licence is not being renewed by the Department. The applicant also pleaded before the Hon'ble Court that though before



approaching this court, petitioner had filed representation (Annexure P-5) to the competent authority for renewal of licence, but till date, the same has not been decided.

2. Accordingly, in compliance with the above directions of the Hon'ble High Court, the notices were issued to the Respondents and, thereafter, the respective parties were heard at length.
3. The case was initially listed on 06-09-2023. Ld. Advocate for the applicant submitted that the applicant has deposited the entire amount in the case. But no documented proof was submitted by the applicant.
4. Replying to above claim of the applicant, the representatives for the Department submitted that the Department has not received any representation. It was further submitted for the Department that interest and penalty apart, tax amount of ₹1, 33, 58, 625/- is due as on this date from the applicant.
5. The applicant was accordingly directed to show by 08-09-2023 the proof of having filed representation before the Department as well proof of having deposited the entire dues with the Department. The Departmental representatives were also directed to file their submissions by 08-09-2023.
6. The applicant on the very day i.e. on 06-09-2023 submitted a representation in the matter along with "Ann P-A" dated 28.7.2023, Annexure "4" dated 11.08.2023, "Ann-B" dated 05.04.2023 and "Ann P-C" copy of order dated 07-07-2023 by the Ld. HP Tax Tribunal.
7. Accordingly, the matter was again listed for 08-09-2023. The applicant was again asked to show proof of having filed representation before the Department and also show the proof of having deposited the entire dues with the Department as has been claimed in CWP No. 5909 of 2023 by the applicant before the



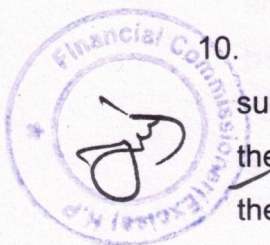
M/S R.R. Bottlers & Distillers Vs State of Himachal Pradesh

Hon'ble High Court. Shri Sanjeev Rana, the authorised signatory, expressed his inability to produce any further proof/documents in the matter and without producing any corroborating documents reiterated that entire dues stand paid.

8. Per contra, the Departmental representatives in their written submissions replied that an amount of ₹7, 30, 45, 626/- on account of VAT, penalty and interest is due from the applicant under the HP VAT Act, 2005 and ₹ 2, 09, 819/- as CST, is due under the Central Sales Tax Act, 1956. In addition to this an amount of ₹ 2, 34, 591/- is outstanding under the HP Excise Act, 2011. Respondents submitted that in view of the fact that the applicant has not submitted any representation to the Department and that dues, above, are pending against the applicant, the petitioner has not placed true facts before the Hon'ble High Court.

9. Shri Sanjeev Rana, the authorised signatory was again asked to submit the evidence in proof of having deposited the entire sum along with document(s) to establish that he had submitted representations to the Department and was even granted further time till 11-09-2023. The applicant did not submit any evidence except stating that he has filed appeals against the above pending demands before the Appellate Authorities. This assertion of the applicant was accepted by the Respondents to the extent that the appellant is in appeal against the penalty and interest amounting to ₹ 5, 96, 87, 001/-. But, VAT amount of ₹1, 33, 58, 625/-, CST amount ₹ 2, 09, 819/- and pending dues worth ₹ 2, 34, 591/- are not under appeals before any authority nor is there any stay order from any authority on recovery of above pending demands. The applicant has not deposited the non-disputed sum of ₹ 1, 38, 04, 035/-.

10. I have carefully gone through the contents of the representation submitted by the petitioner-applicant. I have also carefully perused the documents submitted, along with the representation above, by the applicant and oral submissions made by the applicant. The



M/S R.R. Bottlers & Distillers Vs State of Himachal Pradesh

written submissions on behalf of the Department, along with documents adduced in support of, have also been duly taken into consideration.

11. Facts of the case are that the license of the applicant, for non deposition of pending dues under various enactments such as HPVAT Act, 2005 and CST Act, 1956 etc., was renewed on conditional basis initially only up to five months (up to 31-08-2023) for the Financial Year 2023-24.

12. The applicant filed a writ petition vide CWP No. 5909 of 2023 in the Hon'ble High Court of Himachal Pradesh, which was decided by the Hon'ble court on dated 29-08-2023 with the direction to the respondent No. 2 (undersigned) "**To consider and decide the representation of the petitioner (Annexure P-5) expeditiously, preferably within period of one week**". However, during the course of hearing in the matter the applicant has failed to convince if the claimed representation was at all filed with the Department. The representatives of the Department, through tenable documents and submissions, have been able to convince this forum that the representation as discussed and directed to be disposed, (Annexure-5), by the Hon'ble High Court of Himachal Pradesh was neither submitted by the petitioner nor received in the Department till the hearing of this case in this forum. Applicant while submitting representation before this forum himself, has admitted that the representation was sent through post only. The applicant though could not produce any proof of having posted the representation at all. Also, careful perusal of "Annexure P-5", copies of which are available on record and which were produced before the Hon'ble High Court reveal that these do not bear any signature of the applicant whereas the copies of same reproduced before this forum are now signed ones. Moreover, the contents, fonts and setting of both the 'representations' dated 28.7.2023 and 11.08.2023 are the same and there is no reference in the 'representation' dated 11.08.2023 to the earlier 'representation' dated 28.7.2023 which goes on to prove that though the applicant has stated before the



Hon'ble High Court that he has submitted representations to the Department but the same are not available on the record.

13. The respondent Department asserted that the contention raised by the petitioner that he has deposited the entire dues under Excise Act and under VAT Act and CST Act, and its license is not being renewed is false and baseless, because as per the pendency report received from the Deputy Commissioner of State Taxes and Excise, BBN Baddi vide letter No. 11999 dated 05-09-2023, a total sum of ₹7,30,45,626/- is still pending under HP VAT Act, 2005 and CST Act, 1956 on date against the petitioner which pertains to different financial years since 2018-19 and includes VAT ₹1,33,58,625/-, CST ₹2,09,819/-, penalty ₹4,59,99,968/- and interest ₹1,36,87,033/-. Apart from this amount ₹2,34,591/- also stands pending under Excise Act, 2011 (pointed out by the Audit team). It is worth emphasizing that the petitioner has only agitated the levy of interest and imposition of penalty before the Appellate Authorities, and at the same time, has failed to deposit the non-disputed principal amount of VAT ₹1,33,58,625/-, CST ₹2,09,819/-, which the petitioner has not even challenged in the appeals filed before the authorities.
14. The submissions and corresponding record made available by the Department thus falsifies the claim of the applicant that entire dues of the Department stand paid. It is borne from the perusal of record that dues in the form of huge amount are pending against the applicant under the Himachal Pradesh Value Added Tax Act, 2005, Central Sales Tax Act, 1956 and Himachal Pradesh Excise Act, 2011. Interest and penalty worth ₹5,96,87,001/-, being contested by the applicant before the Appellate Authorities, apart, undisputed VAT, CST and Excise Dues worth ₹1,38,04,035/- is pending against the applicant which falsifies the claim, as put before the Hon'ble Court, of the applicant that entire dues stand paid.
15. In the absence of any "No Dues Certificate" by the applicant I am inclined to agree with the Department that contrary to claim put before the Hon'ble High Court, the applicant-licensee has not deposited the entire pending dues with the Department payable under the HP VAT



M/S R.R. Bottlers & Distillers Vs State of Himachal Pradesh

Act, 2005 and CST Act, 1956. This fact is further verified on account of the record and fact that even during the Financial Year 2022-23, the licenses of the applicant, for the lack of "No Dues Certificate" were being renewed on quarterly basis as under:

- Up to 31-07-2022.
- Initially up to 31-10-2022
- Up to 31-01-2023
- Up to 31-03-2023

Similarly during the current Financial Year 2023-24, for non clearance of dues under various enactments, the license of the applicant has been conditionally renewed for initial five months only. Further renewal subjected to fulfillment of all codal formalities including clearance of pending dues.

16. The representatives of the Department, though admitted that the applicant-licensee has preferred appeals before the various authorities challenging the orders passed against him for the different financial years, but it is the version of the Department that the motive is just to gain the time to deposit the pending dues under various enactments and to get his license renewed despite the fact that the petitioner is chronic defaulter in clearing his pending liabilities under the HP VAT and CST Act etc. ever since financial year 2017-18 to till date. The details of such pending appeals are as under:-

Sr. No.	Appeal No./year	Additional Demand	Financial Year	Status
1.	01,02,03/2022-23	1,25,72,718/- 71,18,413/- 2,29,69,855/-	January to March, 2019 2019-20 2020-21	Pending before the Appellate Authority South Zone.
2.	107/2022-23	2,61,32,496/-	June, 2018 to Dec, 2018	Do
3.	01/2023-24	1,65,29,129/- (VAT) 2,44,979/- (CST)	2021-22	Do
4.	93/2023-24 (Case Remanded by the Ld. HP Tax Tribunal) vide order dated 07-07-2023)	3,67,39,349/-	April, 2017 to May, 2018	Do

For the details given above, which have not been refuted by the applicant, I endorse the submissions above of the respondents.



M/S R.R. Bottlers & Distillers Vs State of Himachal Pradesh

Further, there is no record available to suggest that there is any stay on the recoveries of demands above.

17. Further, in view of below quoted proviso contained under Rule 12.1 of Himachal Pradesh Liquor License Rules, 1986 the Department is lawfully constrained to renew the license of the applicant:

12. (1) X X X X X X X X X X X

Provided that no order for renewal of license in form L.1, L.1-B and L.1-C shall be made if the licensee is in arrears of Excise and Sales Tax dues and unless the applicant furnishes along with the application for renewal a certificate to the following effect duly issued in his favour by the Assessing Authority of the District concerned:-

CERTIFICATE

Certified that M/s
are registered/not registered under the Himachal Pradesh General Sales Tax Act, 1968/H.P. VAT Act, 2005/the Central Sales Tax Act, 1956 against Registration Certificate No. (if any)

It is further certified that the dealer has filed the quarterly/monthly returns under the above Acts upto 31-12-20 i.e. upto to the third quarter of the current financial year and has paid the entire Sales Tax or VAT due upto The assessment of the dealer under these Acts has been finalized upto (preceding financial year) and additional demand of Rs. and interest amounting to Rs. have been duly paid into the Government Treasury and no Sales Tax or VAT dues from the dealer are in arrears.

Place
Date

Signature of A.A. with seal of office

Provided further that non submission of the certificate by the applicant alongwith the application for renewal shall render the license automatically liable to be cancelled for the following year.

For the above given provisions of the HP Liquor License Rules, 1986, till the deposit of all his pending dues/liabilities and furnishing of "No Dues Certificate" the license of the applicant cannot be renewed. As a matter of fact there is a letter from the District-In-Charge wherein it is informed that liabilities worth ₹7, 32, 55, 445/- are pending against the applicant.

17. In view of facts, details, provisions of law and discussion made in para 11 to 16 above added by the fact that the applicant was granted extended opportunity to submit the documents and evidence to bring home his claim, on account of failure by the applicant to do so, I find no ground and reason to agree with the applicant that he had




M/S R.R. Bottlers & Distillers Vs State of Himachal Pradesh

submitted the stated representation to the Department. The applicant has also miserably failed to prove before this forum that entire dues payable to the Department stand paid, therefore, the pleadings and grievance put before the Hon'ble Court that the petitioner representations are pending before the Department and further that all pending dues stand deposited are not proved by the applicant and have been found to be misplaced and contrary to facts otherwise available on record, hence the present representation, being devoid of merit is liable to be rejected and is being rejected accordingly.

The applicant along with respondent parties may be informed accordingly. File may be consigned to the record room after completion.

Announced on 13th of September, 2023




**Financial Commissioner (Excise)-
cum- Commissioner of State Taxes & Excise
Himachal Pradesh.**

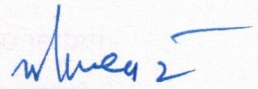
Endst. No. ST&E/CST&E-FC (E)-Reader/2023 - 25458-62

Dated: 13-09-2023

Copy forwarded to:-

1. M/s R. R. Bottlers & Distillers, Goel Jamala, Nalagarh, RD BBN.
2. Addl. Commissioner State Taxes & Excise (D)/HQ.
3. Collector Excise, South Zone, Shimla-09.
4. Dy. C (ST&E), RD BBN.
5. Leal Cell (HQ).

IT Cell


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