

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

Appeal No.: 15/2020

O. M. A. No. : 05/2020

Date of Institution: 27-01-2020

Date of Order: 07-05-2022

In the matter of:-

M/s Pashupati Spirits & Wine, Ner Chowk,
Tehsil Sundernagar District Mandi,
Himachal Pradesh

.....Appellant

Versus

1. Collector, Excise Central Zone Mandi,
District Mandi, Himachal Pradesh, Shimla
2. Deputy Commissioner, State Taxes & Excise,
Mandi, District Mandi, Himachal PradeshRespondents

Present:

1. Shri Arsh Rattan, Advocate for the Appellant.
2. Shri Rakesh Rana, Deputy Director (Legal) for the Respondents.

ORDER

1. Appellant in the extant appeal matter is L-1 Licensee in the name and style of M/s Pashupati Spirits & Wine, Ner Chowk, Tehsil Sundernagar District Mandi. The licensed premises of the Appellant were inspected on 06-09-2019 by the team of Departmental Excise Officers led by the Dy. C ST&E, District Mandi. During the course of above inspection, mismatch was found between physical stock and stock as per the Stock Register. This mismatch in stock was considered as an offence under section 43 of the Himachal Pradesh Excise Act, 2011, was accordingly reported to the Collector Excise, Central Zone, Mandi, who after issuing notice to the licensee, and hearing him in the matter on 28-11-2019, compounded the matter for a sum of ₹ 22, 93, 378/- (₹ Twenty Two Lakh, Ninety Three Thousand Three Hundred and Seventy eight only), under section 66 (1) of the Act. Felt aggrieved by this order, the



Appellant has filed the present appeal under Section 68 (2) of the H.P. Excise Act, 2011.

2. Shri Arsh Rattan, Ld. Advocate arguing in the matter for the Appellant submitted that the inspection was conducted by the Respondent No.2 in an illegal manner and in violation of provisions of H.P. Excise Act, 2011 and Rules framed under the Act as the provisions with respect to inspection clearly provide that inspection should be carried out in the presence of the licensee or his authorized representatives. He argued that Shri Raj Pal Rana, whose statement was recorded on spot during the inspection, was neither the Manager nor the authorized representative of the Appellant, but he merely is a salesman working in the above inspected liquor vend, who, was not having any knowledge of stock register of the Appellant.
3. The inspection in his presence and recording of his statement, as per argument of the Ld. Advocate, clearly reflects mala fide and arbitrary intention of the inspecting team, therefore, the entire process being bad in law is liable to be set aside.
4. Ld. Advocate further argued that respondent No. 2 was well aware about the whereabouts of the licensee/Appellant as well as his authorized representatives as list of such persons was already with the Respondent No. 2, but, despite that fact, the respondent No. 2 in hot & haste manner conducted inspection of half of the premises only whereas inspection of the rest of the premises was not conducted by the inspecting team. Ld. Advocate submitted that the entire stock was lying in the godown/premises, but no opportunity was given to the Appellant or his authorized representative to present himself to disclose the real facts about the stock, in the absence of competent persons, correct position could not be placed before the inspecting team, so, the less quantity shown in the detection report is totally perverse as the same is not based on correct record of the godown/premises.



5. Ld. Advocate, arguing further on behalf of the Appellant submitted that bare perusal of the statement/ report would show that the said Shri Raj Pal Rana had stated that stock register was not completely filled in as the same was filled in only till 31.08.2019, so, by not filling in the stock register, the appellant/licensee has not violated any Rules nor would this lead to such conclusion that stock was not proper. As per arguments of the Ld. Advocate, the Respondents have, thus, committed illegality on this account, therefore, as per averments of the Ld. Advocate, the impugned order being bad in law is liable to be quashed and set aside.
6. Replying to the arguments of the Appellant, Shri Rakesh Rana, Ld. Deputy Director (Legal) present as Counsel for the Respondents submitted that the Appellant has alleged that inspection of his licensed L-1 premises was conducted in an illegal manner and in violation of the provisions of the H.P. Excise Act & Rules, whereas, contrary to the allegation, the inspection was conducted by the inspection team strictly in accordance with the provisions of H.P. Excise Act 2011 & H.P. Liquor License Rules, 1986. The Appellant has alleged that the person i.e. Sh. Raj Pal Rana present at the time of inspection was neither Manager nor authorized representative; whereas Sh. Raj Pal Rana has admitted in his written statement that he is working as a Manager in L-1 premises of the Appellant. Inspection team had initiated the process of inspection only after his admission that he is working as a manager at this L-1 vend. Inspection of the licensed premises is a routine affair of the department, and it was just a routine and surprise inspection, therefore, the allegation that the inspection is mala fide is completely unreasonable and false and it being a surprise inspection, there was no need of prior intimation to the Appellant.
7. Replying to the argument of the Appellant that a list of Managers was supplied to the Department, Ld. Counsel submitted that no such list of managers was ever supplied by the Appellant to the respondent. Replying to the contention of the Appellant that the stock available in the licensed premises was not counted properly



by the inspection team, Ld. Counsel replied that L-1 premises of the Appellant had an area of 3000 Sq. ft. (Approx.) only and at the time of inspection a stock of only 1235 boxes of IMFL and 640 boxes of Beer & RTD (ready to drink beverages) was lying in the premises. More than 70% of the godown portion was lying empty; hence, there was no question of any stock being left uncounted. Moreover, the inspection team completed the task of inspection in a thoroughly professional manner and each and every bottle lying in the stock was taken into consideration while preparing brand-wise inventory and no stock was, thus, left uncounted.

8. Ld. Counsel for the Respondent admitted the arguments of the Appellant to the extent that the sales and stock register of the inspected L-1 was maintained up to 31.08.2019 only on the date of inspection i.e. 06.09.2019. While comparing physical stock with the stock register, transactions pertaining to receipt and issue of stock between 31.08.2019 (date up to which register was maintained) and 06.09.2019 (date of inspection), were also taken into consideration despite the fact that same, in violation of the provisions of the HP Liquor License Rules, were not recorded in sales and stock register at the time of inspection. Ld. Counsel for the Respondents further replied that it was just a routine inspection, conducted in accordance with the provisions of the H.P. Excise Act 2011 and H.P. Liquor License Rules, 1986, and during the course of inspection as huge mismatch between physical stock and stock as per sales and stock register maintained by the Appellant was recorded, therefore the same was without any prejudice and any mala fide intention.

X X X X X X X X X

9. I have heard both the parties in the matter. All the relevant record in the matter has been meticulously looked into. Perusal of the record reveals that the licensed premises of the Appellant were inspected on 06-09-2019 by the team of Departmental Excise Officers led by the Dy. C ST&E, District Mandi. The inspection



started with the recording of statement of Sh. Raj Pal Rana, who had introduced himself to the inspecting team as Manager of L-1 premises of the Appellant firm i.e. M/s Pashupati Spirits & Wine, Ner Chowk, Tehsil Sundernagar District Mandi. It is, thus clear that inspection proceeding continued in his presence only after his admission that he is working as a Manager in this L-1 vend. During the course of above inspection, mismatch was found between physical stock and stock as per the Stock Register. This mismatch in stock was considered by the inspecting team as an offence under section 43 of the Himachal Pradesh Excise Act, 2011, and was accordingly reported to the Collector Excise, Central Zone, Mandi, who after issuing notice to the licensee, and hearing him in the matter on 28-11-2019, compounded the matter for a sum of Rs. 22, 93, 378/- as under:

Retail Excise Duty	: ₹22, 27, 727/-
Additional RED	: ₹37, 209/-
ETD Development Fund	: ₹19, 442/-
Penalty	: ₹09, 000/-
Total	: ₹ 22, 93, 378/-

The sale and stock register which was found maintained only up to 31-08-2019 was checked for ascertaining stock position, as per accounts, in the presence of the Manager and other workers present at L-1. An inventory of the stock, physically available, was also prepared on spot which was duly signed by the Manager as well. After comparison of stock as per stock register and stock physically found in the premises, it was noticed that the stock was **short** as under:

Kind of Liquor	Quarts	Pints	Nips
IMFL	661 ⁴	61 ²¹	52
Beer	765	5	-
Breezer	35	-	-



The mismatch above stood even after taking into account all the unaccounted/non-recorded transactions between 01-09-2019 to 06-09-2019. The reports in the matter also reveal that the Manager L-1

Licensee could not produce Inspection Note Book and brand wise Stock Register on demand in violation of Rule (17) and (18) of the HP Liquor License Rules, 1986 quoted hereunder:

(17) The licensee shall maintain an inspection note-book with the pages numbered consecutively duly authenticated by the Excise Inspector and hand it over on demand to any Excise Officer of the First Class of the Excise Department on a receipt being given therefor. Any punishment, or warning incurred by the licensee other than forfeiture or cancellation of his license, shall be recorded in this book.

(18) The licensee shall at any time produce for inspection on demand by any Excise Officer of the First Class of Excise Department, his license, accounts, registers and inspection note-book and shall allow the inspection of his registers, stocks and premises by the said officer.

From the above provisions it is clear that the inspection was conducted as per Rules. The Appellant, thus, has failed to bring home his contention that the inspection was not conducted lawfully or was mala fide. The Manager in his statement has admitted that he has not filled in Stock Register after 31-08-2019. From this statement it is clear that the Manager L-1 was having complete knowledge about the stock in the premises and for the added and recorded fact that half of the premises were empty and there were no other nearby licensed premises in the name of Appellant, the contention of the Appellant that Shri Raj Pal Rana was not the authorized person and that the correct position could not be placed before the inspecting team is not convincingly substantiated.

10. The contention of the Appellant that not filing the Stock Register for the period 01-09-2019 to 06-09-2019 or to conclude that the stock was incorrect lack merit for the fact that all the transactions between the period 01-09-2019 to 06-09-2019, though not accounted for in stock register, were, nevertheless, taken into consideration, and there was established variation in stock even after above consideration.



**M/s Pashupati Spirits & Wines, Nerchowk, Mandi Vs Collector (CZ), Mandi
Appeal No. 15 of 2020**

11. In view of the discussions in para 9 and 10 above, the arguments of the Appellant in the present matter lack merit and conviction. I find no illegality in the order dated 28-11-2019 passed by the Collector (Excise) CZ Mandi, and the Appellant, on account of shortfall of the liquor in the inspected licensed L-1 premises above, has rightly and lawfully been directed to deposit the total amount of ₹ 22, 93, 378/-. The impugned order, accordingly, is upheld to be legal, proper and in order. The present appeal, thus, fails and is rejected and disposed of accordingly.

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.




Financial Commissioner (Excise)

Himachal Pradesh, Shimla-9

Endst. No. STE/Reader-FC/Appeals/2022-23

13527-531

Dated: 07-05-2022

Copy forwarded to:

1. The Collector (Excise), Central Zone, Mandi, District Mandi (HP), 175 001.
2. Dy. Commissioner (ST&E), Mandi, HP, 175 001.
3. M/s Pashupati Spirits & Wine, Ner Chowk, Tehsil Sundernagar District Mandi, 175 008.
4. S/Shri Anup Rattan, Arsh Rattan, Advocates Chamber No. 260, Chalet Building, High Court, (HP), The Mall Shimla-01.
5. Shri Rakesh Rana, DDL (Legal Cell) HQ.


Reader to the

Financial Commissioner (Excise)

Himachal Pradesh, Shimla-9