

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

Appeal No. 27/2021-22

OMA No. 01 in 27/2021-22

Date of Institution: 24-03-2022

Date of Order: 09-05-2022

**IN THE MATTER OF: -**

Shri Vishal Uppal, Prop. M/s Tulip Bar & Restaurant  
L-4, L-5 Ward No. 3, Nadaun, District Hamirpur..... **Applicant**

**Vs**

1. Dy. Commissioner (ST&E), Hamirpur
2. Collector (Excise), Central Zone, Mandi..... **Respondents**

**Present:**

1. Shri Kulwant Singh Gill, Advocate for the appellant.
2. S/Shri Rakesh Rana, Deputy Director (Legal Cell) and David Mohan, ASTEO, Nadaun for Respondents.

**ORDER**

in

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

1. This is an appeal filed by the appellant Shri Vishal Uppal, Prop. Ms Tulip Bar & Restaurant L-4, L-5 Ward No. 3, Nadaun, District Hamirpur. The appellant is aggrieved by the communication vide Endst. No. EXN-HMR/Excise-9150 dated 15.03.2021, claimed to have been received by the Appellant on 17.03.2022, whereby penalty amounting to ₹ 47,750.00 has been imposed on the Appellant for non-compliance of the rules framed under the HP Liquor License Rules and Excise Announcements for the year 2019-20.
2. Briefs in the matter are that the appellant L-4, L-5 Licensee in the name and style of M/s Tulip Bar & Restaurant, Ward No. 3, Nadaun District Hamirpur.
3. Leaned Advocate Kulwant Singh Gill submits that the appellant on 17.03.2022 received a communication through WhatsApp vide



Endst. No.EXN-HMR Excise-9150 dated 15.03.2021, wherein penalty amounting ₹47,750.00, as under was imposed on him for non-compliance of the rules for the relevant period.

a) Late filing of application: ₹ 5, 000.00/-.

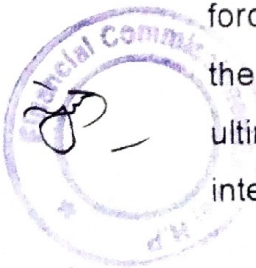
b) Late deposition of fee: ₹ 7, 750.00/-

c) Less lifting: ₹ 35,000.00/-.

Learned Advocate submitted that penalty of ₹ 5, 000/- was imposed for the non submission of the application on due date i.e. 31.03.2020. He submitted that due to covid-19, pandemic a complete nation-wide lockdown was imposed on 23-03-2020 and it was due to this reason that the applicant could not submit his application on time, however, the same was submitted as soon as the normalcy regained.

4. Learned Advocate also submitted that the second penalty of ₹ 7, 750/- was imposed for the late deposition of the fess. Learned Advocate repeated that since the due date was 31.03.2020, and due to complete nation-wide lockdown fee due could be deposited on time however the same was deposited later on.

5. Learned Advocate further submitted that the third and last penalty of ₹ 35, 000/- was imposed for not lifting of the mandatory minimum quota. Submitting reasons for same Ld. Advocate submitted that since the Appellant used to lift the quota for his Bar and Restaurant from the nearby L-2, but due to overcharging, he was forced to file complaint against the said L-2 Licensee thrice. This overcharging, even, lead to closure of L-2 for one day. He submitted that due to this sole reason altercation between the parties started which ultimately led to filing various cases against each other. He submitted that even allegation of Dacoity was levelled against the Appellant and his family and due to this enmity the Appellant was forced to file application for changing his L-2, vend and further that the matter stands assailed before the Hon'ble High Court H.P, which ultimately stands compromised between the parties. In the intervening period of the case pending before various authorities, the





Appellant could not lift the mandatory quota for obvious reasons, submitted the Ld. Advocate. The Ld. Advocate also furnished the copies of the order dated 12.01.2021, passed by the Financial Commissioner Himachal Pradesh and the order dated 25.03.2021 passed by the Hon'ble High Court of Himachal Pradesh as annexure.

6. Ld. Advocate also argued that even otherwise, there are number of instances and cases where the quota was reduced keeping in view the hardship caused to the licensees due to Covid-19. It was for this reason that he could not lift the mandatory quota. He also submitted that the Hon'ble High Court even granted relief on pro-rata basis for the period when lockdown was imposed.
7. Putting in grievances in the matter on behalf of the Appellant, the Ld. Advocate argued that the impugned order was passed in the year 2021 for the violations committed during the year 2019-20, whereas certified copy of the order was never communicated to the Appellant and he only received a Whats-app communication just before the next fiscal year. Such an approach of the department is not permissible under any rule of law, argued the Ld. Advocate for the Appellant. Ld. Advocate also submitted that the demand raised pertained to previous year and not to the current fiscal year and there is no provision where, the respondent department could fasten the liability for the previous fiscal year. Ld Advocate submitted that if circumstances are unavoidable and there is a proper justification for violation of any rule, penalty in such cases cannot be imposed on license holder(s).
8. S/Shri Rakesh Rana, Deputy Director (Legal Cell) and David Mohan ASTEO, Nadaun Circle on behalf of Respondent No. 1 & 2 submitted that the Appellant had failed to file renewal of application by due date i.e. December 2019 and the plea of the Appellant that the same could not be filed due to COVID-19 is wrong and beyond facts as COVID-19 restriction were imposed only in the last week of March 2020. Also, the Appellant failed to deposit the payable renewal fee by due date and the reason given by the Appellant that the delay was on account of COVID-19 is not considerable for the fact that renewal

fee was to be deposited by the end of December 2019 for the renewal of the License L.4 L.5, but same was not deposited within the stipulated time, hence penalty of ₹ 7, 750/- was rightly imposed on the Appellant. Replying to the contentions of the Appellant that he was in dispute/altercation with the L-2 Licensee (the supplier of liquor to the Appellant) is also not true as the less lifting was reported for the year 2019-20, and the dispute between the Appellant and the supplier (L-2 Nadaun) surfaced in the year 2020-21, notwithstanding the fact that any relief sought by the Appellant on this account has already been overruled by the Hon'ble High Court vide order dated March 25, 2021.

9. I have heard the views and arguments of both the parties. I have also gone through the case record and have perused the same carefully. Based on these and the intra-departmental correspondence, the following points arise for decision:-

- (1) Whether the penalties and levies have been levied lawfully?
- (2) Whether the order should have been communicated to the Appellant in a formal way?
- (3) Final order.

**Point No. (1)**

From the perusal of case record and intra-Departmental correspondence between the ASTEO Circle, District In Charge and Collector Central Zone, Mandi, it is revealed that the License in Form L.4 and L.5 in respect of Appellant was due for renewal for the year 2020-21. Before the renewal of license ibid, the Appellant was required to have fulfilled certain terms and conditions of the License L.4 and L.5 granted to him as per provisions envisaged in the HP Liquor License Rules, 1986 (amended from time to time). Some of the requirements as are relevant to the case under discussion are:

1. Submission of application in timely manner for the renewal of license for the year 2020-21.
2. Payment of Renewal Fee in the scheduled manner.





3. Compliance with the terms and conditions of the license.

Under Rule 11 and 12 of the HP Liquor License Rules, 1986, it is provided that:

**11. All applications for the grant, extension or renewal of licenses, which require the orders of the Excise Commissioner under the Intoxicants License and Sale Orders or these rules<sup>1</sup>[except for L.2, L.14 and L.14-A] should be received through proper channel in the Excise Commissioner's office before the end of December, each year:**

**12. (1)] Every application for renewal of a license, other than <sup>1</sup>[L.2, L.14 or L.14-A and] a license governed by rule 11, shall be submitted to the Excise Officer incharge of the district by the 31<sup>st</sup> day of January, each year. The Excise Officer-in-charge of the district shall lay before the Collector by the 10<sup>th</sup> day of February each year a list of all licenses requiring renewal. The list shall be accompanied in the case of licenses on the assessed fee, by a certificate of sales during the current year upto 31<sup>st</sup> December; in the case of bottling license by a similar certificate showing proof litres bottled upto 31<sup>st</sup> day of December. Except with the special sanction of the Excise Commissioner, no order for renewal or non-renewal shall be made after <sup>5</sup>[31<sup>st</sup> day of March] in respect of licenses for the following financial year:**

As the Appellant had submitted application for the renewal of licenses late for the year 2020-21 and also, the renewal fee was deposited late, therefore, for not abiding by the provisions of the Rules above the Appellant has rightly been imposed penalties of ₹ 5, 000/- and ₹7, 750/-above. Also, the Appellant had lifted only 189.449 proof litres of IMFS and had failed to lift the minimum prescribed quota of 900 proof litres of liquor during the year 2019-20, so, as the condition of renewal of license for the next year 2020-21 was not fulfilled, therefore, a penalty of ₹ 35, 000/- has rightly been imposed. The contention of the Appellant that the demand raised pertained to previous year and not to the current fiscal year and there is no provision where, the respondent department could fasten the liability for the previous fiscal year is not correct in view of the condition No. 12.33 (ii) of the Excise Announcements 2019-20:

**12.33 (ii) A holder of license in form L-3, L-4, L-5 (single unit), L-3-A, L-4-A, L-5-A (single unit), L-4 & L-5 (single unit) and L-4A, L-5A (single unit) shall be required to lift minimum quantity of the liquor, as prescribed below, proportionately on monthly basis during the current financial year i.e. 2019-20 from the L-2, L-14 and L-14A (whatsoever is applicable) licensee to which such bar license holder is attached for procuring supplies. It will also apply as a precondition for renewal of the license for the next financial year:-**



From above given provisions it is clear that to lift minimum quantity of the liquor is a precondition for renewal of the license for the next financial year, so the contention of the Appellant that there is no such provision in law is not correct in view of above explicit provisions contained in the **ANNOUNCEMENTS** itself.

Thus, on this point I do not agree with the contention of the appellant and the penalties and levies have been levied lawfully.

**Point No. (2)**

Appellant is aggrieved that the order was not communicated to him and that he received the order through WhatsApp only. From the perusal of the record it is revealed that the process of renewal of licenses for the coming year are initiated at the Circle level, where the Circle (A)STEO sends a report, application of renewal of license, payable fee, quota lifting and other codal formalities to the District In Charge, who in turn, as per provisions of the Rule 11 and 12 of the HP Liquor License Rules 1986, sends the report further to the concerned Zonal Collector. The Zonal Collector, scrutinizes the submitted records/reports and if any anomaly or violation is found, the Collector imposes the penalties and communicates the same as a list of demand to the concerned District In Charge to ensure, through Circle (A)STEO, the recovery of any demand due from the Licensees as raised by the Collector. Accordingly, the District In Charge further communicates the same to the concerned Circle (A)STEO for ensuring recovery from the concerned licenses/applicants. It is only after payment of any pending dues that the licenses are renewed. It was in the above listed series of events that the Circle ASTEO communicated the demand above to the Appellant and the Appellant, accordingly, was bound to pay the same when the demand was brought to his notice by the ASTEO and, the list being exhaustive, there was no need to communicate the order in person to the Appellant.

**Final Order:**

For the aforesaid reasons recorded here-in-above, while discussing the Points vide No. (1) and (2) above, I find no merit in



**M/s Vishal Uppal Tulip Bar & Restaurant (L.4 L.5) Vs Collector (Excise), CZ, Mandi,  
Appeal No. 27 of 2021-22**

the Appeal and the same, on account of failure on merit, is liable to be dismissed and is accordingly dismissed.

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

Let the copy of this order be supplied to all concerned. The file after due completion be consigned to record room.

**Announced.**



**Financial Commissioner (Excise)  
Himachal Pradesh**

Endst. No. DoST&E/FC (Excise)/Reader/2022-23/ **13559-63** dated: 09-05-2022

Copy forwarded for information to:--

1. Collector (Excise), Central Zone, Mandi, HP.
2. Dy. Commissioner (ST&E), Hamirpur, District Hamirpur, H.P.
3. Shri Vishal Uppal, Prop. Ms Tulip Bar & Restaurant L-4, L-5 Ward No. 3, Nadaun, District Hamirpur.
4. Shri Kulwant Singh Gill, Advocate, Chamber No. 133, HP High Court, Shimla-01.
5. Shri Rakesh Rana, Deputy Director, Legal Cell, HQ.

*D/c*

*[Signature]*  
**Reader  
Financial Commissioner (Excise)  
Himachal Pradesh**