

**BEFORE THE FINANCIAL COMMISSIONER (EXCISE),
HIMACHAL PRADESH
(BLOCK NO. 30, SDA COMPLEX, SHIMLA-09)**

Appeal No. 11/2023

MA No. 01/2023 in Appeal No. 11/2023

Date of Institution: 02-12-2023

Date of Order: 07-12-2023

In the matter of:

M/s Kalash Wines

Retail Lic. L-2/L-14/ Chopal Unit,

District Shimla (Year 2023-24)

.....Appellant

Vs

1. Collector (Excise)-cum- Addl. Commissioner (ST&E),
South Zone, Shimla, District Shimla
2. Deputy Commissioner State Taxes & Excise, Shimla,
District Shimla.Respondents

Present:

1. S/Shri Abhishek Barowalia and Vishav Vijay Singh, Learned
Advocates for the appellant.
2. Shri Wishve Bhaskar, ACST&E, Legal Cell, and Shri Amit
Kashyap ASTEO O/o Collector, South Zone for the
Respondents.

ORDER

1. The present appeal filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011, by M/s Kalash Wines L-2/L-14 Lic. Chopal Unit (Year 2023-24), is against the order dated 01-12-2023 passed by the Collector (Excise), South Zone, Shimla, District Shimla, whereby L-2/L-14 licenses granted in favour of the appellant in respect of Unit above have been cancelled under section 29 of the HP Excise Act, 2011 (read with condition no. 2.42 of the Annual Excise Announcements 2023-24) for non-payment of due monthly license fee for the month of October 2023, amounting to ₹1, 32, 73, 831/-. The due fee, above, was payable latest by November 7, 2023. Along with the appeal above, the appellant has also filed an application seeking issuance of interim directions to the respondents.



2. Briefs in the matter are that the appellant was granted retail liquor licenses in Forms L-2/L-14 in respect of vends under Chopal Unit, District Shimla, for the year 2023-24. The respondent No. 1 received a report submitted by the respondent No. 2, that the appellant licensee has not paid the due monthly license fee for the month of October 2023. The respondent No. 1 issued first notice dated 09 November 2023 to the appellant and the case was taken up for hearing on 15-11-2023, 18-11-2023, 22-11-2023 and 28-11-2023. During the case hearing the appellant repeatedly sought time till 20-12-2023 for depositing the pending license fee above citing heavy rain fall and road blockage as the reason for not depositing the fee. The respondent No. 1 vide order dated 01-12-2023 cancelled the licenses in respect of Chopal Unit under section 29 (b) and (c) of the Himachal Pradesh Excise Act, 2011 read with condition No. 2.42 of the Annual Excise Announcements. The appellant, feeling aggrieved against the aforesaid order has preferred the present appeal.

3. On request of the appellant the matter was listed for hearing on the date of institution itself i.e. 02-12-2023. The appellant during the course of hearing submitted that it may be granted time till December 20, 2023. It was also argued for the appellant that if it is not granted the sought time till 20-12-2023 then the impugned order dated 01-12-2023 passed against the appellant is illegal and invalid for the reason that condition No. 2.42 vests no power with the Collector (Respondent No. 1) to allow time beyond three days from the date of default (here November 7, 2023). Learned Counsel for the appellant also raised substantial questions of law in the case whether the Collector has exceeded his powers with regard to Clause No. 2.42 of the ANNUAL EXCISE ANNOUNCEMENTS YEAR 2023-24, whether the vends should remain open during the pendency of appeal and the appellant be granted time till December 20, 2023 and beyond to deposit the fee for the remaining months?

4. The representative for the Department submitted that the appellant has not deposited the payable license fee for the month of October 2023, which was payable latest by November 7, 2023. It was further submitted that arguments of the appellant are contrary in themselves. Learned Counsels for the respondent also submitted that as per contentions of the appellant if it



is granted relief from depositing pending license fee till December 20, 2023 and beyond then the impugned order is legal, valid and agreeable to the appellant; on the contrary if he is not granted time as desired by him, then the order is illegal and invalid? The representatives for the Respondents submitted that the appellant did not deposit any amount against the pending license fee, thus instead of depositing the overdue government revenue and prove his bonafide in running the default vends, the appellant is trying shift the onus now on the Department.

5. Replying to the arguments of not depositing the fee due to heavy rainfall and road blockage, the representatives for the Department submitted that the Government through letter vide Endst. No. EXN-F (I)-1/2023 dated 25th September, 2023 deferred the payment of license fee of the month of August, 2023 till 7th of October, 2023 and the payment of license fee for the month of September, 2023 was deferred till November 7, 2023 vide letter *ibid*.

6. I have heard the arguments of both the parties, perused the case record and gone through the case events. This Court has framed the issues as per the pleadings submitted this court:

- 1) Whether the appeal filed by the appellant is maintainable or not?
- 2) Whether the appellant is entitled to the relief claimed in the appeal?

Reasoning/Findings of the issue No.1:

1. The appellant was a successful bidder of the Financial Year 2023-24 and has been allotted licenses in Form L-2/L-14 Unit Chopal, District Shimla. As a matter of fact being the successful bidder qua the Unit Chopal, the appellant is legally bound to fulfill and comply with the conditions of the Announcements for the year 2023-24. Further, as per the order passed by the Respondent No. 1, the Respondent No. 2 vide his office letter No. EXN-SML-Excise-2023-24/21907 dated 08-11-2023 has submitted a report before the Respondent No. 1, pointing out that the appellant had not deposited the license fee of ₹1, 32, 77, 134/- for the month of October 2023, in that



eventuality, the appellant has become liable for action under section 29 of the Himachal Pradesh Excise Act, 2011 read with condition No. 2.42 of the Annual Excise Announcements 2023-24. Thereafter, the proceedings were initiated against the appellant under section 29 of the Act read with Condition No. 2.42 of the ANNUAL EXCISE ANNOUNCEMENTS 2023-24 by the Respondent No. 2 against the appellant before the Respondent No. 1. The notice was served upon the appellant to appear before the Respondent No. 1 on 15-11-2023. On 15-11-2023, Shri Yashpal, present on behalf of the appellant before the Respondent No. 1, was heard in detail and his statement was recorded in questionnaire form. The appellant appeared before the Respondent No. 1 and submitted therein that the appellant wanted to run the Unit and sought time till 20-12-2023 to deposit the pending license fee for the month of October 2023. The case, seeking the status of pending license fee from the concerned District, was listed for 18-11-2023 and 22-11-2023. The appellant appeared before the Respondent No. 1 on 22-11-2023 and again requested for the grant of time, to deposit the pending license fee for the month of October 2023, till 20-12-2023. In lieu of not depositing the pending October, 2023 fee, notice for appearance on 28-11-2023, for cancellation of Licenses in respect of vends under the Unit Chopal, was issued on 25-11-2023. The appellant, accordingly, appeared before the Respondent No. 1 on 28-11-2023, admitted the fact of non-deposition of license fee for the month of October, 2023 citing the heavy rainfall and road blockage (but without material evidences) as reasons for not depositing the pending fee. Despite above, the appellant again expressed the intent to run the Unit, but again sought time to deposit the pending fee by 20-12-2023. Deciding the matter, finally on 01-12-2023, Respondent No. 1, on receipt of report from Respondent No. 2 to the effect that sum of ₹1, 32, 73, 831/- still remains payable as on 30-11-2023 towards license fee qua the month of October 2023, cancelled the licenses in respect of vends of Chopal Unit. Subsequent to cancellation of licenses above, directions to seal the vends of Chopal Unit were also issued to Respondent No. 2. While passing above impugned order the Respondent No. 1 has duly cited the provisions of Section 29 (b) and (c) of the Himachal Pradesh Excise Act, 2011 read with Condition No. 2.42 of the ANNOUNCEMENTS FOR THE YEAR 2023-24 applicable in the case:

29. Power to cancel or suspend licenses etc.—Subject to such restrictions as the State Government may prescribe, the authority granting any lease, license, permit or pass under this Act, may cancel or suspend it—



(b) if any excise duty or countervailing duty or, other fee payable by the holder thereof is not duly paid; or

(c) in the event of any breach by the holder of such lease, license, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such license, permit or pass;

Condition No. 2.42 of the ANNOUNCEMENTS:

“The annual license fee (as per bid/tender offered) shall be divided into twelve installments so that the entire license fee is cleared by 15 March of the financial year. The license fee payable for a particular month shall be deposited into the government treasury by the 7th day of the subsequent month failing which the concerned District In charge shall send the report to Zonal In-charge concerned within three days. The Zonal In-charge shall cancel the license of vend/unit within three days positively in case the licensee fails to deposit the monthly license fee and the advance amount deposited shall be forfeited.

However, if the licensee deposits monthly license fee, the cancellation proceedings in respect of defaulting unit/vend may be dropped by the Zonal In-charge by imposing a maximum penalty of Rs. 1, 00, 000/- and the licensee shall be allowed to continue the operations. The entire process to be concluded by the Collector In-charge within three days.”

7. In view of provisions given under condition No. 2.42 of the ANNUAL EXCISE ANNOUNCEMENTS FOR THE YEAR 2023-24, it is not arguable that the last date of payment of license fee for the month of October 2023 was 7th of November, 2023. However, from the perusal of the record and as per admission of the fact by the appellant, the appellant, himself, has repeatedly requested the Respondent No. 1 to grant him time till December 20, 2023 to deposit the pending license fee of ₹1, 32, 73, 831/- for the month of October 2023. The Respondent No. 1, following the cardinal principle of natural justice, granted the due opportunity to the appellant of being heard. Further, the Government through letter vide Endst. No. EXN-F (I)-1/2023 dated 25th September, 2023 had already deferred the payment of license fee of the month of August, 2023 till 7th of October, 2023 and the payment of license fee for the month of September, 2023 was deferred till November 7, 2023 vide letter *ibid*. It was only after granting of substantial time and opportunity, that the Respondent No. 1 passed the impugned order under section 29 (b) and (c) of the HP Excise Act, 2011 read with Condition No. 2.42 of the ANNAL EXCISE ANNOUNCEMENTS, YEAR 2023-24. The appellant during the course of case hearing in this court was specifically asked as to how he is aggrieved by the impugned order. To this the appellant replied that he should have been granted the sought time till 20-12-2023 to deposit the pending license fee of October, 2023. It is pertinent and worthwhile to mention here that it is also the pleading of the appellant



that by not cancelling the vends within three days, the Respondent No. 1 has exceeded his powers? Thus, it is only due to the appellant's own act and conduct (of not depositing the due pending fee) that the granted licenses in respect of vends under Chopal Unit were cancelled, and rightly so, as terms and conditions of the licenses granted to him were breached by violating the provisions given under section 29 (b) and (c) of the HP Excise Act, 2011 read with conditions No. 2.42 of the Annual Excise ANNOUNCEMENTS, year 2023-24; therefore, the order passed by respondent No. 1 is legally valid having being passed in accordance with the provisions of the Act ibid and conditions of the ANNOUNCEMENTS for the year 2023-24 and the present appeal is not maintainable as it fails on merit.


Reasoning/Findings of the issue No.2:

The appellant during the course of hearing before the Respondent No.1 though expressed the intent to run the vends under Chopal Unit but could not prove his bonafide, accordingly, in the case as he did not deposit any sum towards the pending license fee amounting to ₹ 1, 32, 73, 831/-, during the course of hearing either before the Respondent No. 1 (w.e.f. 15-11-2023 to 02-12-2023) or before this court; so, on account of his failure to liquidate the huge pending liabilities, and due to his own act and conduct, the appellant is estopped to pray for any relief and as such is **not entitled to any claimed relief** as prayed for.

The appeal is accordingly dismissed in terms of discussion above and the impugned order dated 02-12-2023 passed by the respondent No. 1 is upheld.

8. The miscellaneous application also stands dismissed accordingly. The concerned parties be informed accordingly.





Financial Commissioner (Excise)
Himachal Pradesh

Endst. No. DoST&E/FC(E)-Reader/2023/32964-968 Dated:07-12-2023

Copy for information and further necessary action to:

1. M/s Kalash Wines through Shri Arun Kumaro Son of Shri Ram, r/o village & P.O. Basdehra sub tehsil Mehatpur District Shimla, HP {Lic. Unit No. 3, Chopal Units (Year 2023-24), District Shimla}.
2. Collector (Excise)-cum-Jt. Commissioner State Taxes & Excise, South Zone, Shimla, District Shimla, HP.
3. Dy. Commissioner State Taxes & Excise, District Shimla, HP.
4. Legal Cell, HQ.
- ✓ 5 IT Cell


Reader