

**BEFORE THE FINANCIAL COMMISSIONER (EXCISE),  
HIMACHAL PRADESH, SHIMLA-09**

(Block No. 30, SDA Complex, Shimla-09)

Appeal No. : 04/2023  
Date of Institution : 10-08-2023  
Date of order : 19-01-2024

**In the matter of:**

M/s Kala Amb Distillery and Brewery (P) Ltd.  
Unit 9<sup>th</sup> Mile Stone, Swarghat Road,  
Village Bhangla, tehsil Nalagarh,  
District Solan (HP) .....Appellant  
Vs  
Collector (Excise), South Zone .....Respondent

**Present:-**

1. Ms Sakshi Gautam, Ld. Advocate for the Appellant.
2. Shri Rakesh Rana, Learned Deputy Director (Legal Cell) for the Respondent.

**ORDER**

1. This is an appeal by M/s Kala Amb Distillery and Brewery (P) Ltd. Unit 9<sup>th</sup> Mile Stone, Swarghat Road, Village Bhangla, tehsil Nalagarh District Solan, HP (hereinafter referred to as "the Appellant"). The appeal filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011, is against the order dated 30-01-2023, passed by the Collector Excise (South Zone) (hereinafter referred to as "the respondent") wherein, while disposing of a detection case under the Himachal Pradesh Excise Act, 2011(hereinafter referred to as "the Act"), the offence of violating provisions under section 43 of the Act ibid, after hearing the appellant, has been compounded, for a sum of ₹10, 000/-, under section 66 (1) of the Act. Also, for the reported variations in stock as per provisions of condition No. 13. vi) of the ANNOUNCEMENTS FOR THE ALLOTMENT OF RETAIL EXCISE VENDS BY RENEWAL FOR THE YEAR 2022-23 (hereinafter referred to as "the ANNOUNCEMENTS"), a further penalty of ₹ 5, 00, 000/- has also been imposed.



2. The briefs, further, in the matter are that the licensed premises of the Appellant were inspected on 20-10-2022 by a team led by the Assistant

Commissioner State Taxes & Excise (Excise), Revenue District BBN. During the course of inspection, conducted in the presence of the Officer I/c Bottling Plant and authorized signatory of the plant, variations in the stock of ENA, blended material, VMS (Vatted Malt Spirit) and MMS (Mature Malt Spirit) were noticed vis-à-vis physical stock and stock as per accounts kept in the Appellant bottling plant. The inspection team reported the matter to the Dy. Commissioner State Taxes & Excise (In Charge Revenue District BBN), who, in turn, forwarded the above inspection report to the Learned Collector (Excise), South Zone (the respondent) for further proceedings against the appellant. The respondent, accordingly, issued a notice, dated 22-12-2022, to the appellant for appearance on 30-01-2023. In compliance with the notice, the appellant, on the directed date, appeared before the respondent. The respondent, after hearing and considering the reply submitted by the appellant, compounded the matter, under section 66 (1) of the Act, for a sum of ₹ 10, 000/-. For reported variation in stock, the respondent, further, imposed a penalty of ₹ 5, 00, 000/- under condition No. 13. vi) of the ANNOUNCEMENTS FOR THE ALLOTMENT OF RETAIL EXCISE VENDS BY RENEWAL FOR THE YEAR 2022-23 (hereinafter referred to as "the ANNOUNCEMENTS"). The appellant, felt aggrieved by the orders above, is in appeal, here, against this order.

3. Ms Sakshi Gautam, Ld. Counsel for the **appellant** argued that the variations in the stock of ENA (short by 21 bulk litres) and blended material (short by 24.806 bulk litres), were within the permissible wastage limit allowed under Rule 101-A of the Punjab Distillery Rules, 1932 (as Applicable to Himachal Pradesh), because, as per provisions of the Rules above wastage to the extent of 0.5 percent is permissible in respect of Spirit Store Room and wastage of 1 per cent is allowed during Bottling Operation. The above reported wastage of 21 Bulk Litres and 24.806 Bulk Litres, respectively, is far less than the allowed wastage of 0.5 per cent (Spirit Store Room) and one per cent (Bottling operation) respectively as Rule 9.101-A of the Punjab Distillery Rules, 1932 provides for the following scales of wastage for all the distilleries and bottling plants:-



**WASTAGE ALLOWANCE IN CASE OF**

Spirit Store room	Re-distillation	Bottling operation	Bottled Spirit Room
0.5 percent	1 percent	1 percent	0.5percent

Ld. Counsel further argued that VMS and MMS stock in excess by 52.500 Bulk Litres and 42.604 Bulk Litres, respectively, was due to human error on appellant's part. Relying on the order, dated 28-07-2023, passed by this Court in *M/s Sabacchus Distillery Pvt. Ltd. Vs Collector (Excise)*, in appeal No. 03/2023, and below quoted Clause 7.3 of the **ANNOUNCEMENTS, year 2022-23**, Ld. Counsel submitted that the Clause provides for tolerance of one per cent as under:

7.3 All country liquor during the Excise year shall be packed in such bottles as may be approved by the Commissioner of State Taxes and Excise, Himachal Pradesh. The bottles shall also carry such security mark (such as hologram) as may be prescribed by the Commissioner of State Taxes and Excise, Himachal Pradesh. The bottles of standard capacities will be used viz. 750 Mls., 375 Mls. and 180 Mls. as may be approved by the Commissioner of State Taxes and Excise, Himachal Pradesh.

However, following tolerances may be permitted: -

- a) Bottles of 750 mls. (+ or -7 mls.)
- b) Bottles of 375 mls. (+ or -4 mls.)
- c) Bottles of 180 mls. (+ or -2 mls.)

4. Shri Rakesh Rana, Learned Counsel for the **respondent** submitted a written reply in the matter. It is replied on behalf of the respondent that the Condition No. 13. vi) of the Excise Policy for the year 2022-23 provides as under:

*vi) In (f) any liquor manufacturer found procuring ENA/Bottled liquor either without permit or in excess of quantity prescribed from outside/within the State or in case of difference in stock of ENA/Bottled liquor in a manufacturing unit or with a liquor manufacturer, then such a liquor and its containers (mobile stationary) shall be confiscated and the concerned manufacturer shall be liable to a penalty fine equal to applicable excise levies on such stock or ₹ 5,00,000/- whichever is higher. This amount shall be in addition to the excise levies payable on such stock.*

Since, in the present case stock of VMS (Vatted Malt Spirit) and MMS (Mature Malt Spirit) has been found in excess, and there being no allowance or tolerance in respect of excess spirit, the penalty as per provisions of Condition No. 13. vi) of the Excise Policy (year 2022-23) has lawfully been imposed on the appellant. Respondent also contended that during the course of inspection, stock taking of Spirit namely ENA, Blended Spirit, Vatted Malt Spirit (VMS) and Mature Malt Spirit (MMS) was done for the different Vats and vessels, quantity was checked in terms of dip and bulk liters; and after perusal and cross



checking of physical stock *vis a vis* record maintained as per registers (in Form D-14), the ENA stock was found short by 21 Bulk Litres, blended material stock was found short by 24.806 Bulk Litres, VMS stock **excess** by 52.500 Bulk Litres and stock of MMS **excess** by 42.604 Bulk litres.

As the above reported variation in stock was an offence and violation under per section 43 (d) of the Act and Clause 13. vi) of the ANNOUNCEMENTS (Excise Policy) for the Year 2022-23, therefore, the respondent correctly initiated the proceedings under section 29 of the Act and compounded the matter for a sum of ₹ 10, 000/- under section 66 (1) of the HP Excise Act, 2011, and, further, a penalty of ₹ 5, 00, 000/- as per Clause 13. vi) of the ANNOUNCEMENTS FOR THE YEAR 2022-23 has also been imposed lawfully.

5. I have heard the contentions put forth by both the parties, perused the reports, record and the impugned order as well. Perusal of the statements, record and reports reveals that after comparison of stock as per D-14A and as per physical verification:

- 1). The Stock of ENA has been found short by 21.000Bls (35.280 PLS) in ST-1.
- 2). The Blended material has been found short by 24.806Bls (18.605Pls) in BT-10 and 15.620Bls (11.715Pls in BT-3).
- 3). The Stock of VMS, in PVC Drums, has been found excess by 52.500Bls.
- 4). The Stock of MMS, in PVC Drums, has been found excess by 42.604Bls.

Stock taking of bottled IMFL and Country liquor has been carried out in the presence of both, the Officer in Charge of the appellant Bottling Plant and the authorised signatory on behalf of the appellant.

As per the provisions of Rule 9.101-A of the Punjab Distillery Rules, 1932, the following scales of wastage allowance for the Spirit are prescribed for all the distilleries and bottling plants:-

**WASTAGE ALLOWANCE IN CASE OF:**

Spirit Store room	Re-distillation	Bottling operation	Bottled Spirit Room
0.5 percent	1 percent	1 percent	0.5percent

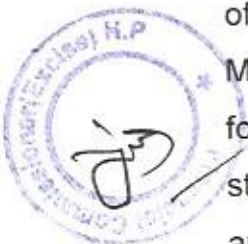
Similarly, whereas Sub-Rule 2 under Rule 9.101-A of the Punjab Distillery Rules, 1932 provides for levy of duty only where the wastage



of spirit exceeds the prescribed limit, Sub-Rule 3 provides for calculation of wastage for each month and Rule 25 of the **Himachal Pradesh Bonded Ware House, Rules 1987** provides for Stock taking of liquor, both bottled and bulk, by the officer-in-charge on the last working day of each month after all the transactions for the day have been completed. Also, Clause 7.3 of the **ANNOUNCEMENTS**, as quoted by the Ld. Counsel for the appellant, permits tolerances of about one per cent only for country liquor bottles of standard capacities.

In the instant case the inspection report submitted to the District In Charge and the report submitted by the District In Charge to the respondent and even the order of the respondent has not mentioned if the reported wastage found during the inspection is beyond the minimum prescribed wastage limit as is provisioned under Rule 9.101-A above; therefore, this Court agrees with the appellant that the less stock of ENA and blended material by 21 bulk litres, 40.426 bulk litres, respectively, is within the wastage limit allowed under Rule 9.101-A of the Punjab Distillery Rules, 1932.

6. However, the appellant, itself has admitted the fact that stock of MMS and VMS has been found in excess respectively by 52.500 bulk litres and 42.604 bulk litres stored in plastic drums of 200.00 and 250 litres capacity, respectively. The appellant, neither at the time of inspection nor during the course of hearing before the respondent, tendered any plausible explanation for this excess stock of VMS and MMS, except, owing same to human error on the part of the appellant. Ld. Counsel during the course of case hearing before this Court, also, could not explain this "human error". The reliance of the appellant on order passed in the case of **M/s Sabacchus Distillery Pvt. Ltd. Vs Collector (Excise)**, appeal No. 03/2023, dated 28-07-2023, by this very Court, and Clause 7.3 of the **ANNOUNCEMENTS**, year 2022-23, is of no help to the appellant as the relied up on tolerance of one per cent is applicable only in the case of country liquor bottles of standard capacities used viz. 750 Mls., 375 Mls. and 180 Mls. But, in the present case, the VMS and MMS stock found in excess being spirit is not country liquor. Also, the spirit being stored in PVC drums of capacities 200 litres and 250 litres, respectively, are neither bottles of standard capacity. Thus, here, I do not find any



illegality in the impugned order that by virtue of detection of excess stock of VMS and MMS, stored in the appellant premises, without valid documents and/or reasons, the appellant had become liable for action under sections 29 and 43 (d) of the Act, Rule 37 of the HP Liquor License Rules, 1986 and Condition No. 13. vi) of the ANNOUNCEMENTS (Excise Policy) for the year 2022-23 and the appellant has rightly been proceeded against as per provisions of the Act, Rules and Excise Policy by the respondent.


### **FINAL ORDER**

For the facts mentioned and observations made in Para 5 and 6 above, the impugned order dated 30-01-2022 passed by the respondent compounding the breach of section 43 (d) of the Act for a sum of ₹ 10, 000/- under section 66(1) of the Act and further, the order to impose penalty of ₹ 5, 00, 000/- under Condition No. 13. vi) of the ANNOUNCEMENTS FOR THE YEAR 2022-23 is upheld. Thus, the appeal fails on merits and is disposed of accordingly along with miscellaneous application(s), if any.

Inform the parties accordingly and the file after due completion be consigned to record room.

**Announced on 19<sup>th</sup> of January, 2024**

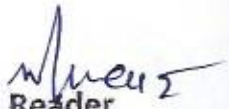


  
**FINANCIAL COMMISSIONER (EXCISE)**  
**HIMACHAL PRADESH**  
**SHIMLA-09**

**Endst. No.:ST&E/CoST&E/Appeals/Reader/2024-1903-1907 Dated: 19-01-2024**

**Copy for information and necessary action to:**

1. M/s Kala Amb Distillery and Brewery (P) Ltd., Unit 9<sup>th</sup> Mile Stone, Swarghat Road, Village Bhangla, District Solan.
2. Addl. Commissioner State Taxes & Excise-cum-Collector (SZ), Shimla-09.
3. Dy. Commissioner (ST&E), RD BBN, Solan, HP.
4. (Legal Cell), HQ.
- ✓ IT Cell.

  
**Reader**