

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

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

Appeal No. 03/2023

Date of Institution: 26-05-2023

Date of Order: 28-07-2023

**In the matter of:**

M/s Sabacchus Distillery Pvt. Ltd.

Village Rehru, tehsil Nalagarh, District Solan (HP).....**Appellant**

Vs

Collector (Excise), South Zone .....**Respondent**

**Parties represented by:**

1. Shri Goverdhan Lal Sharma Learned Advocate for the Appellant.
2. Smt. Monika Attreya, ACST&E (Legal Cell) for the Respondent.

**ORDER**

**IN**

**APPEAL FILED UNDER SECTION 68(2) OF THE HIMACHAL  
PRADESH EXCISE ACT, 2011,**

1. This is an appeal by M/s Sabacchus Distillery Pvt. Ltd. Village Rehru, tehsil Nalagarh, District Solan (HP) (hereinafter referred to as "the Appellant"), filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011, against the order passed on dated 30-01-2023 by the Collector Excise (South Zone) and communicated vide Endstt. No. EXN-Excise-Challan-2022-23/1549-1551 Dated 20-03-2023.
2. The briefs in the matter are that the licensed premises of the Appellant were inspected on 17-10-2022 by a team led by the Assistant Commissioner State Taxes & Excise (Excise), RD BBN. Inspection was conducted in the presence of the ASTEO/Officer-in-Charge Plant and Plant/Production Manager/Blender Shri Sanjay Kumar, the authorized signatory Plant. During the course of inspection of the Appellant bottling plant/license-premises the inspecting team found the stock of blended material in excess by 54Blis i.e. six cases. This excess reported stock



was handed over to the Officer In-Charge of the Plant for safe custody of the same till further orders.

3. Dy. Commissioner State Taxes & Excise, In Charge Revenue District BBN forwarded the above detection case to the Learned Collector (Excise), South Zone, the Respondent, for compounding and further necessary action. The Learned Collector vide show cause notice, dated 22-12-2022, issued to the Appellant, directed the Appellant to appear before him on 30-01-2023 to explain why penalty should not be imposed upon the Appellant as he was liable for action under section 29 and 43 of the Himachal Pradesh Excise Act, 2011. Accordingly, the Appellant appeared before the Learned Collector on above date and after hearing the Appellant, the Learned respondent Authority proceeded to compound the matter for a sum of ₹10, 000/-, for reported variation in stock and 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 above compounding sum and penalty was in addition to excise levies, if any, as applicable on the reported variation/difference in stock. The appellant, felt aggrieved by the orders above, is in appeal against this order.
4. Shri Goverdhan Sharma, Learned Advocate for the Appellant argued that the reported violation above where the stock of blended material 'COMMANDO BLEND' has been reported in excess by 54Bls i.e. six cases is within the tolerance permitted under Clause 7.3 of the **ANNOUNCEMENTS**.
5. Learned Advocate argued that the impugned order is erroneous on two accounts; firstly, tolerance above prescribed in the **ANNOUNCEMENTS** has not been taken into consideration in the impugned order, and secondly, the penalty of ₹ 5, 00, 000/- has been imposed under condition No. 13 (vi) of the very **ANNOUNCEMENTS** without issuing the mandatory notice of violation of condition above.
6. Learned Advocate further contended that notwithstanding the fact that measurement of stock of liquor, through dip rod, was done during the ongoing bottling operation, excess stock reported by the inspecting



officer during the inspection carried out on 17-10-2022 was minor and well within the legally tolerable limit. He further argued that dips of different other vats were also checked and were found to be matching with the records and that stock of finished goods was also found matching with the records.

Ld. Counsel for the Appellant argued that in view of above there is no violation/contravention of the provisions of the HP Excise Act, 2011; therefore, the proceedings initiated against the appellant vide impugned order dated 30-01-2023, under section 29 and 43 of the HP Excise Act, 2011 and under provisions 13. vi) of the **ANNOUNCEMENTS** be quashed and set aside in the interest of justice and law.

7. Ms Monika Attreya, ACST&E, representative for the Respondent contended that during the course of inspection stock taking of Spirit namely ENA and Blended Spirit was carried out from different vats and quantity checked in terms of dip and bulk liters. After perusal and cross checking *vis a vis* physical stock and record maintained as per registers (in Form D-14), some variation was noticed in the Blended material. The stock was found in excess by 54Bl/six cases. This excess reported stock was seized and the reported further to the Learned Collector (South Zone) through District In-Charge. The Learned Collector after hearing the Appellant found that this excess stock of blended material was an offence as per provisions 13. vi) of the **ANNOUNCEMENTS** and accordingly compounded the matter for a sum of ₹10, 000/- under section 66 (2) of the HP Excise Act, 2011. Learned Collector (South Zone), further proceeded to impose a penalty of ₹5, 00, 000/- under provision *ibid* of the **ANNOUNCEMENTS FOR THE YEAR 2022-23**.

X X X X X X X X X X X X

8. I have heard the contentions put forth by both the parties, perused the reports and case record carefully as well. I have also carefully gone through the findings given in the impugned order. Perusal of the case record and impugned orders reveals that stock taking was carried out in the presence of both, the Officer-in-Charge of the Bottling Plant and the authorised signatory on behalf of the Appellant. It is evident from the



perusal of the case record and inspection report that inspection of the plant was started while bottling operation was going on and had to be stopped for inspection. It is also evident from the record that excess stock of 54 bulk litres/six cases of blended material was reported on the day of inspection. Detection report that stock was excess by 54Bl/six cases implies that the excess stock reported is *vis a vis* bottled stock. The factum of stock being less by 25.980Bl/s on 18-10-2022 (the day next to the day of inspection) is also there on record and has not been denied by either of the contending parties. It is a matter of common sense that before measurement of stock of liquor, through dip rod, stored/stocked in tanks/vessels, it is to be ensured that the liquor is settled. The above reported and contrary variations recorded by the Respondent Department, itself, point to the fact that the method of measurements of stock adopted in the present case is not reliable and is prone to errors. So the Appellant must be given the benefit of doubt especially when Clause 7.3 of the Announcements too provides for tolerance 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.)

The contention of the appellant that the above tolerance has neither been discussed nor taken into consideration in the inspection report, forwarding report and impugned orders is valid on the face of available record.

9. Also, there is nothing contrary on record to disagree with the grievance of the Appellant that the penalty of ₹ 5, 00, 000/- has been imposed under condition No. 13 (vi) of the ANNOUNCEMENTS without issuing the mandatory notice of violation of condition above.
10. In view of the facts discussed I paras 8 and 9 above it is clear that in the impugned order, dated 30-01-2023, there are errors apparent on the face of record, provisions of the Act, Rules and ANNOUNCEMENTS.



The impugned order, therefore, deserves to be quashed and set aside and is ordered accordingly. The appeal, being on merits is allowed. The matter is remanded back to the Learned Collector (South Zone) to give clear findings on above observed anomalies and errors and decide the same afresh, preferably within six weeks of date of passing this order, after duly taking into consideration, also, the mentioned and applicable provisions of the ANNOUNCEMENTS and Punjab Distillery Rules, 1932 as applicable to Himachal Pradesh. Before passing the orders, afresh, the Appellant is needed to be heard as well.

11. All the concerned parties be informed and the file after due completion be consigned to record room.

Announced on 28<sup>th</sup> of July, 2023.

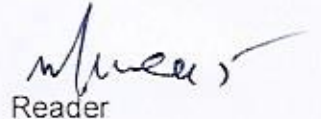


Financial Commissioner (Excise)  
Himachal Pradesh

Endst. No. DoST&E/FC(E)-Reader/2023/20855-59 Dated 28-07-23

Copy to:

1. Sabacchus Distillery Pvt. Ltd. Village Rehru, tehsil Nalagarh, District Solan (HP).
2. M/s Collector (Excise), South Zone.
3. Dy. Commissioner State Taxes & Excise, Revenue District BBN, HP.
4. Smt. Monika Attreya, ACST7E, Legal Cell, HQ.
- ✓ 5. IT Cell.



Reader