

**BEFORE SHRI YUNUS, I.A.S.**  
**FINANCIAL COMMISSIONER (EXCISE)**  
**HIMACHAL PRADESH**  
(Block No. 30, SDA Complex Shimla-171009)

Excise Appeal No. 01/2022-23  
Date of Institution: 01-06-2022  
Date of Order: 01-07-2022

**In the matter of:**

M/s Vinod Sharma, S/o Late Sh. Hans Raj Sharma,  
Village Barogi, P.O. Kumarsain, Distt Shimla HP 172 029  
(Lic. L-14 Sainj & Sub-Vend *Rashot* Year 2022-23)

.....Appellant

Vs

1. Collector-cum- Additional Commissioner, State Taxes & Excise, Gr-1, South Zone, Himachal Pradesh, Shimla-09.
2. Deputy Commissioner State Taxes & Excise, District Shimla.
3. Joint Commissioner-cum-Collector State Taxes & Excise, Central Zone, Mandi.
4. Assistant State Taxes and Excise Officer, Kumarsain, District Shimla, H.P.
5. M/s B. Banga (L-14) Luhri, District Kullu

.....Respondents

**Parties Represented by:**

1. Shri Goverdhan Lal Sharma, Advocate for the Appellant.
2. Shri Sandeep Mandyal, Law Officer, Ms Pappu Kumari, ASTEO Kumarsain Circle, District Shimla, Shri Mungi Ram ASTEO Anni Circle, District Kullu for the Respondent No. 1-4 above.

**ORDER**

1. This order shall dispose of above appeal filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011, filed against the order dated 12.05.2022, passed by the Collector (Excise)-cum-Addl.



Commissioner of State Taxes & Excise, South Zone, Shimla, (hereinafter referred to as Respondent No. 1), whereby the sub-vend L-14 Rashot for the main vend L-14 Sainj of the Appellant was ordered to be located to another location so as to create residual buffer area between the vend of the Appellant as well as the vend of the Respondent No.5.

2. Admittedly, the sub-vend L-14 as well as main vend of the Appellant is situated in Sainj within the jurisdiction of District Shimla and the liquor vend L-14 Luhari of the Respondent No.5 is situated in District Kullu.
3. The perusal of the record shows that the Respondent No. 5 raised an objection regarding the opening of sub-vend of the Appellant at L-14 Rashot being run in contravention of Condition No. 2.21 the Excise Announcements for the year 2022-23 (hereinafter referred to as "Announcements").
4. During the pendency of the Appeal, this Court specifically directed the Respondents No. 1 & 3 to submit specific report in the matter under the provisions of Clause 2.21 of the Announcements. Thereafter, during the course of hearing the Respondents No. 1 & 3 submitted a joint inspection note in respect of the liquor vend of the Appellant as well as the Respondent No.5. This report is stated to have been prepared in reference to letter dated 18.04.2022 issued by the Respondent No.1 for the joint inspection.
5. It was contended by the Appellant that his sub-vend as well as main vend fulfils all the conditions including 2.21 of the Announcements and it was the liquor vend of Respondent No. 5 which was





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frequently shifted from its initial location/position to the detriment of the interest of the Appellant and in these circumstances the Appellant cannot be held liable for the violation of Condition No. 2.21 of the Announcements.

6. Though, there was reference of joint inspection by the Respondents No.1 as well as Respondent No.3, stated to have been conducted on 21.04.2022, but, it is crystal clear from the impugned order dated 12.05.2022 that the same has only been signed by the Respondent No.1 and there were no signatures of Respondent No.3 on it so as to show that the matter has been collectively decided by the Respondents No. 1 & 3 as per mandate of Condition No. 2.21 of Announcements. It is the same inspection report which has been submitted by the Respondents No. 1 & 3 during the pendency of the present Appeal also.

7. It is clear from the impugned order that no collective decision has been taken by the Respondents No. 1&3, as, the present dispute regarding the location of liquor vend pertains to Districts Kullu and Shimla located in different zones. Even, the joint inspection note submitted by the Respondents No. 1 & 3 is merely the information of the facts and neither any collective nor any conclusive decision has been taken as per mandate of Condition No. 2.21 of the Announcement. The Condition No. 2.21 provides that:

*"2.21. Sub-vends shall be granted to a retail licensee within the State subject to payment of annual license fee of Rs.8,00,000/- or 10% of the vend value whichever is lower subject to the minimum of Rs.4,00,000/-. Whereas, keeping in view the issue of smuggling of liquor into the State, the sub-vends shall be granted within a distance of 100 meter from the State border on the payment of annual license fee of Rs. 3,00,000/-. The*



*sub-vends shall be approved and granted by the Collector of the Zone concerned. Such a sub-vend may be allowed within the distance of not more than the one third of the total distance between the main vend of the applicant licensee/s and that of vends of the other licensee(s) in the vicinity, thereby creating a residual buffer area between the vend of one licensee and that of another licensee. In case of opening of sub-vend at inter-district border, the Collector shall decide the matter by considering the opinions of district incharges of concerned districts if both districts fall within the same zone. However, if the matter pertains to districts located in different zones, the Collectors of both the Zones shall collectively decide the matter."*

8. In view of the discussions made hereinabove, the impugned order dated 12.05.2022 passed by the Respondent No.1 does not fulfill the mandate of Condition No. 2.21 for want of collective decision by the Collectors of both the Zones, i.e. Respondents No. 1 & 3, therefore, the same is liable to be set aside and is accordingly set aside with the direction to Respondents No.1 & 3 to collectively decide the matter as per mandate of Condition No. 2.21 of the Announcements after duly considering the factum of previous frequent shifting of vend/sub-vend of the Appellant as well as Respondent No.5 from their initial location existing at the time of their first allotment/renewal, within a period of seven days positively. In view of disposal of this Appeal, the miscellaneous Applications, if any, are also disposed of as having become infructuous.

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

Announced on 01<sup>st</sup> of July, 2022.



  
Financial Commissioner (Excise)  
Himachal Pradesh

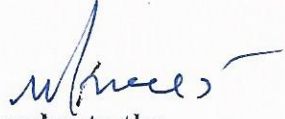


Endstt. No. DoST&E/FC(E)/Reader/2022-23 /20192-98 Dated: 01-07-2022

**Copy for information and compliance to:**

1. Collector-cum- Additional Commissioner, State Taxes & Excise, Gr-1, South Zone, Himachal Pradesh, Shimla-09.
2. Joint Commissioner-cum-Collector State Taxes & Excise, Central Zone, Mandi.
3. M/s Vinod Sharma L-14 Sainj, District Kullu.
4. Deputy Commissioner State Taxes & Excise District Shimla.
5. Assistant State Taxes and Excise Officer, Kumarsain District Shimla, H.P.
6. M/s B. Banga (L-14) Luhri, District Kullu.
7. Sh. Sandeep Mandyal, Sr. Law Officer, Legal Cell.

IT Cell

  
Reader to the  
Financial Commissioner (Excise)  
Himachal Pradesh