

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

**Excise Appeal No. 02/2022-23
Date of Institution: 30-06-2022
Date of Order: 06-07-2022**

In the matter of:

Surjeet Singh, S/o Late Sh. Kamar Singh, Resident of VPO Gharwasharh, Sub Tehsil Tihra, Tehsil Dharampur, Distt Mandi, HP (Lic. Unit No.5, Hamirpur, Year 2022-23)

.....Appellant

Vs

1. Collector-cum- Joint Commissioner, State Taxes & Excise, Central Zone, Mandi.
2. Deputy Commissioner State Taxes & Excise, District Hamirpur.

.....Respondents

Parties Represented by:

1. Shri Jiya Lal Bhardwaj, Advocate for the Appellant.
2. Shri Sandeep Mandyal, Law Officer, Sh. Anurag Garg, ACST&E (Excise) and Nitin Gupta ASTEO, (Excise) for the Respondent No. 1 & 2.

ORDER

1. This order shall dispose off an Appeal filed under section 68(2) of the Himachal Pradesh Excise Act, 2011 filed against the orders dated 23.06.2022 and 29.06.2022 passed by the Respondent No.1 whereby the liquor vends of Unit No.5 Kuthera-Uhal of the Appellant were firstly suspended and later on were finally cancelled.
2. The facts giving rise to the present appeal are that the Appellant is a licensee of Unit No.5 having liquor vend situated at L-14 Main Bazar Kalanjhari, L-14 Uhal, L-14 Gawardu, L-14 Main Bazar Tauni Devi and sub-vends Pung Khad. On 22.06.2022, an inspection of above stated liquor



vends of Kuthera-Uhal Unit No.5, Distt. Hamirpur, belonging to the Appellant was conducted by ACST&E (E), Hamirpur alongwith other officials. After the inspection as many as 901 bottles of IMFL brand of Soulmate Blue Whiskey were found from the above said liquor vends of the Appellant. Those IMFL Brand of Soulmate Blue was found without any excise passes and this brand was also not registered for the financial year 2022-23. The inspection team also recorded the statement of person(s) incharge of the vends during the inspection. The Inspection Team thereafter found violation of the provisions of HP Excise Act, 2011 and HP Liquor License Rules, 1986 and recommended action under Section 43 alongwith Section 29 of the HP Excise Act, 2011. The said inspection report alongwith all the documents including statement of person(s)/incharge(s) was forwarded to the Respondent No.2 who in turn forwarded the same to the Respondent No.1 for appropriate action under Sections 43 & 29 of HP Excise Act, 2011 as well as under HP Liquor License Rules. The Respondent No.1 vide his order dated 23.06.2022 firstly suspended the license of the Unit No.5 Kuthera-Uhal under Section 29 of the HP Excise Act and further directed the Respondent No.2 to ensure the compliance including the sealing of vends, thereof.

3. Thereafter, the notice was issued to the Appellant by the Respondent No.1 and the Appellant also filed detailed reply wherein the Appellant admitted the factum of non-disclosure of unsold stock and requested for invoking the provisions of Section 66(2) of the HP Excise Act (which provides for the composition of offences). Further, the Appellant also took a



specific stand that the department officials have issued manual passes on 01.04.2022 as well as on 06.04.2022 for the quantity of as many as 11 boxes of the Soulmate Blue Whiskey. It was also contended that the factum of IMFL brand of Soulmate Blue Whiskey being not registered was not within the knowledge of the Appellant and even in that case the Department officials ought not to have issued excise passes. The Respondent No.1 after taking into consideration the contentions of the respective parties, vide its order dated 29.06.2022 finally cancelled the license issued in favour of the Appellant under Section 29 of the HP Excise Act, 2011.

4. It was argued on behalf of the Appellant that the findings of the Respondent No.1 regarding the factum of seizure of IMFL brand of Soulmate Blue Whiskey without any passes is totally contrary to the record as the department officials themselves issued excise passes on 01.04.2022 and 06.04.2022. The suspension and subsequent cancellation of licenses of the liquor vends is not only harsh but also oppressive. He also contended the factum of un-registration/deregistration of IMFL brand Soulmate Blue Whiskey was not in his knowledge especially when the department officials issued excise passes for the same. The Appellant further admitted the factum of unsold stock was not disclosed to the department for the reason that it would attract license fee.
5. Per contra, it was argued on behalf of the State that the Appellant has violated the terms and conditions of the



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license and orders dated 23.06.2022 and 29.06.2022 are only legally justifiable and sustainable in the facts and circumstances of the case.

6. I have heard the contentions of both the parties and gone through the record with minute details.
7. Admittedly, the IMFL brand Soulmate Blue Whiskey seized from the liquor vends of the Appellant was registered for the financial year 2021-22 but this brand is not registered for current financial year of 2022-23. It is admitted case of the parties that 75 cases were recovered from different vends of Unit No.5 belonging to the Appellant and there is no account of 64 boxes as the manual passes have only been issued with respect to 11 boxes of Soulmate Blue Whiskey.
8. The impugned order dated 29.06.2022 for cancellation was passed on three points:
 - Firstly*, the 75 cases of Soulmate Blue Whiskey without passes and the licensee/Appellant failed to justify the balance No. i.e. 64 cases especially when only 5 Quarts stated to have been balanced stock as on 31.03.2022 (i.e. at the time of the closer in the financial year 2021-22).
 - Secondly*, the letter dated 23.06.2022 has been written by the DCST&E, Hamirpur after detection/inspection to SHO, PS Hamirpur for registration of FIR against the Appellant.
 - Lastly*, one FIR No. 0149/2022 dated 25.06.2022 under Section 39(1)(a) was registered whereby 32 cases of IMFL brand Soulmate Blue Whiskey were found nearby the vend of the Appellant.
9. The Respondent No.1 taking into consideration all the three factors, passed the impugned order whereby the license of



the Appellant was cancelled under Section 29 of HP Excise Act, 2011.

10. As far as recovery of 75 boxes of IMFL brand Soulmate Blue Whiskey without any passes is concerned, the specific stand taken by the Appellant that he is not at fault as the manual passes have been issued even after 31.03.2022 i.e. on 01.04.2022 uptill 06.04.2022 for total number of 11 boxes of the IMFL brand Soulmate Blue Whiskey. The orders are silent:

Firstly, about the fact that as to how and in what manner the passes have been issued with respect to IMFL brand Soulmate Blue Whiskey which was not registered for the Current financial year i.e. 2022-23;

Secondly, how and in what manner the Appellant/Licensee came into possession of the 65 boxes IMFL brand of Soulmate Blue Whiskey detected/found in the month of June, 2022 especially when there was only a stock of 5 Quarts, as balance at the time of closure of financial year (as on 31.03.2022);

Lastly, about the fact as to whether the 32 boxes of IMFL brand of Soulmate Blue Whiskey (which as per the impugned order itself found nearby the vends of the Appellant) was part of the stock of the Appellant or otherwise.

11. As far as the factum of letter dated 23.06.2022 for registration of FIR is concerned, the same is in consequential at this stage being simply a request letter.



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12. As far as the registration of FIR No. 0149/2022 dated 25.06.2022 is concerned, it is crystal clear from the contents of the FIR that 32 cases of IMFL brand Soulmate Blue Whiskey were allegedly recovered/seized by the Police from the cowshed of one Sh. Vijay Kumar. There is no iota of any facts or allegations which connects, (at this stage) the very registration of the FIR with the Appellant. Further, mere recovery of the 32 cases of IMFL brand Soulmate Blue Whiskey from the nearby vend of the licensee/Appellant is not at all sufficient to draw an inference at this stage about the complicity of the Appellant in the said offence.
13. The proportionality and the deterrence must be the prominent factors to determine the appropriate punishment/penalty. Thus, the punishment/penalty should be in proportion and commensurate to the nature of offence/violations committed.
14. Therefore, keeping in view the fact that the impugned order is silent about the issuance of passes of unregistered brand, source of 65 boxes and the relation of the 32 boxes with the Appellant and also the fact that merely a request letter dated 23.06.2022 being sent by the DCST&E, Hamirpur to SHO PS Hamirpur for registration of FIR in consequence of the detection/inspection and also mere registration of FIR No.0149/2022 dated 25.06.2022 and that too in the absence of any allegation/involvement of the Appellant in the same, at this stage.

In view of discussion made hereinabove, the impugned orders dated 23.06.2022 and 29.06.2022 are liable to be

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quashed and set aside and the same are accordingly set aside with the direction to Respondent No.1 to decide the matter afresh preferably within the period of two days. This appeal is disposed off accordingly. 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 6th of July, 2022.



**Financial Commissioner (Excise)
Himachal Pradesh**

Endst. No. ST&E/FC(E)/Reader/2022-23 /

Dated: 06-07-2022

Copy for information and compliance to:

1. Collector-cum- Joint Commissioner, State Taxes & Excise, Central Zone, Mandi
2. Deputy Commissioner State Taxes & Excise, District Hamirpur.
3. Shri Jiya Lal Bhardwaj, Advocate, Chamber No. 336, HP High Court Shimla.
4. Sh. Sandeep Mandyal, Sr. Law Officer, Legal Cell.
5. Surjeet Singh, S/o Late Sh. Kamar Singh, Resident of VPO Gharwasharh, Sub Tehsil Tihra, Tehsil Dharampur, Distt Mandi, HP (Lic. Unit No.5, Hamirpur, Year 2022-23).
6. IT Cell.

**Reader
Financial Commissioner (Excise)
Himachal Pradesh**