

**BEFORE THE FINANCIAL COMMISSIONER (EXCISE) -
CUM-COMMISSIONER OF STATE TAXES AND
EXCISE, HIMACHAL PRADESH, SHIMLA-09**

Appeal No.:05 of 2022-23

Date of Institution: 21-09-2022

Date of Order: 27-01-2023

In the matter of: -

Arjun Singh Jaryal

Licensee Unit No. 141, (Year 2014-15)

District Kangra, (HP)

..... **Appellant**

Versus

Joint Commissioner (Appeal), State Taxes & Excise,

North Zone, Palampur, District Kangra (HP)**Respondent**

Parties Represented by:

1. Shri Mehar Chand Jamwal, Ld. Advocate for the Appellant.
2. Shri Sandeep Mandyal, Senior Law Officer, Legal Cell, HQ.

ORDER

1. Present appeal has been filed under section 68 of the Himachal Pradesh Excise Act, 2011, by Sh. Arjun Singh Jaryal, Excise Licensee, Year 2014-15, Unit No. 141, District Kangra, (HP). The appeal is filed against the orders, dated 23-06-2022, by the Collector-cum-Jt. Commissioner of State Taxes & Excise North Zone Palampur District Kangra (HP).
2. Brief and relevant facts in the case are that the appellant was an Excise License holder Unit No. 141, year 2014-15, in District Kangra, Himachal Pradesh. The annual License fee of the Unit for the year 2014-15 was ₹ 75, 24, 204/-. But the appellant-licensee did not complete the necessary codal formalities and also defaulted in payment of license fee. So, the license granted in favour of the appellant was cancelled on 13-10-2014, and as per provisions of the Excise ANNOUNCEMENTS for the year 2014-15, was re-allotted, on 20-10-2014, to another licensee. In order to recover the pending dues against the appellant and loss to the State on account of re-allotment



of Unit, the then Assistant Excise & Taxation Commissioner-cum-Collector Grade-1, (LRA), Kangra (HP) started recovery proceedings against the appellant in the month of September 2014 itself. Vide letter No. EXN-KAN-Excise/12408, dated 18-09-2014 and letter No. EXN-KAN-Excise/16493, dated 16-12-2014, the AETC-cum-Collector Grade-1, Kangra requested Tehsildar Sinhuta to make red ink entries into land records of the appellant vide *Khata/Khatouni No. 29/41, Khasra No. 741/349, Mouja Samot*, in District Chamba. Copy of the above letter was also endorsed to the appellant. The appellant did not raise any objection, anywhere, in the matter for more than six years. The concerned revenue authorities of the tehsil informed the respondent Department that there was, already, charge of Kangra Central Co-operative Bank over the above property of the appellant, which the appellant had pledged to the Department in the course of allotment-proceedings. Meanwhile, when the bank issued an NOC in respect of the property, the Dy. Commissioner of State Taxes & Excise, Kangra vide order No. EXN/KAN/Excise/2020 21/2111) dated 12-03-2021, again, issued directions to the Tehsildar, Sihunta, in District Chamba to pledge/make red ink entries into land records of the appellant. The appellant, aggrieved by this order, dated 12-03-2021, of the Dy. Commissioner (ST&E)-cum-Collector Grade-1, Kangra, filed an appeal before the Joint Commissioner (State Taxes & Excise)-cum-Appellate Authority, North Zone, Palampur, District Kangra (respondent), above. The respondent vide order dated 23-06-2022 dismissed the appeal filed by the appellant. Felt aggrieved by the orders of the respondent, above, the appellant has filed the present appeal.

3. Shri Mehar Chand Jamwal, Ld. Advocate for the appellant has made the following submissions in the matter:

1) That vide order No. EXN/KAN/Excise/2020 21/2111), dated 12-03-2021, the Dy. Commissioner (ST&E), District Kangra issued directions to the Tehsildar, Sihunta, District Chamba to pledge/make red ink entries into land records of the appellant to recover the arrears of ₹ 27, 43, 975/-. These directions were challenged before the respondent above with the grievance that the principle of natural justice has not been followed as these directions have been issued



without giving the opportunity of being heard to the appellant, which is violation of provisions contained under section 69 (2) of the Himachal Pradesh Excise Act, 2011 (hereinafter referred to as 'the Act').

2) That the appellant was allotted only L-14 Rait vend for the period 01.04.2014 to 31.03.2015 for annual license fee of ₹ 51, 15, 903/-. But the annual license fee of the allotted vend for the year 2014-15, as per letter No. EXN/KAN/EXCISE/2020-21/ dated 28.10.2020 issued by the respondent, is now only ₹ 41, 66, 629/-. As the appellant was the licensee of the Unit only until 30.09.2014, so, the pro-rata license fee of ₹ 20, 83, 315/- was payable by the appellant. That the Unit stood re-allocated to other person(s) for the remaining period of the financial year 2014-15. Appellant, Arjun Singh Jaryal, has deposited license fee of ₹ 20, 92, 947/-. As such, the appellant has deposited excess license fee ₹ 9, 632/- and the same is refundable to him.

3) That the respondent has erred to have added the huge amount of penalty in the proposed arrear recovery of ₹ 27, 43, 975/- against the appellant, since, the provisions of penalties have been stipulated only for the offences committed or to be committed, if any, under sections 39 to 46 of the Himachal Pradesh Excise Act, 2011. But non-deposit of License fee, which is neither a duty nor a tax but is a fixed component of license fee only, the licensee is liable to punished only with a fine which may extend to one thousand rupees only in terms of section 47 of the ibid Act. As such, no other penalty is imposable upon the appellant.

4) That no interest is chargeable on fixed license fee and the respondent has knowingly ignored the provisions as laid-down under proviso (c) appended to sub-heading H (Special Conditions) of Rule 41 of the Himachal Pradesh Liquor License Rules, 1986 which enforced interest at the specified rate on delayed payment of fixed license fee. This provision of levy of interest has been omitted vide notification No. 7-47/96-EXN- 5675 dated 31.09.1997 published in R.H.P (extraordinary). Hence, interest is not chargeable on fixed license fee as brought out against the appellant.



- 5) That the respondent has not quantified the component of license fee, interest & penalty (separately) pertaining to the recovery of arrear of ₹ 27, 43, 975/- in spite of the fact that he was requested to do so. Therefore, the impugned order passed by the respondent is purely based on premises and surmises.
- 6) That the respondent Department was requested to provide original file No. 17.01/2014/EXN-(NZ)-Excise pertaining to the proposed arrear recovery of ₹ 27, 43, 975/- against the appellant, but the file was not provided to the appellant.
- 7) That at the time of sealing liquor shop, there were some valuable items and articles lying inside the shop and the Ld. Court is requested to give directions to the respondent, as deemed fit and proper, for compensating loss occurred during the sealing and taking over the vend.
- 8) That in view of the fact that condition No. 4.3 of the Excise ANNOUNCEMENTS for the year 2014-15 has been declared *ultra vires* by the Hon'ble HP High Court order, dated 06-09-2019, in the matter of M/s Mohan Meakin Ltd Vs State (CWP No. 5232 of 2014), therefore, penalties amounting to ₹ 5, 02, 447/- and interest amounting to ₹ 1, 59, 224/- is deductible from the arrear of ₹ 27, 43, 975/-.
- 9) That the respondent, despite request, did not allow the appellant sufficient time to submit above judgment before him at the time of hearing of case.
4. Shri Sandeep Mandyal, Sr. Law Officer, for the respondent, submitted that Unit No. 141 was allotted to the appellant for the year 2014-15 for an annual license fee of ₹ 75, 24, 204/-. The appellant did not fulfill the necessary codal formalities post allotment of Unit to him. He also defaulted in payment of due license fee. Several opportunities were afforded to him to fulfill the codal formalities and notices were issued to him to pay the due license fee. The appellant citing his poor



financial condition kept on requesting the respondent Department to grant him time to deposit the pending dues. It was due to non-fulfillment of the codal formalities and non-payment of pending due license fee that vide order dated 13-10-2014, the respondent, under section 29 (b) & (c) of the Act, cancelled the license of the appellant Unit. As per provisions of the Act, Rules and ANNOUNCEMENTS for the year 2014-15, the Unit, with effect from 21-10-2014, was re-allotted to another licensee Sh. Roop Chand Baluria. *Pro rata* licensee fee of the Unit No. 141 for the period 01.04.2014 to 20-10-2014 was calculated at ₹ 41, 66, 629/- (not ₹ 51, 15, 903/- as claimed by the appellant in his rebuttal). For the period 21.10.2014 to 31.03.2015, the license fee was ₹ 33, 57, 575/-. Ld. Law Officer also submitted that the value of ₹ 51, 15, 903/- was the annual license fee of one vend, L-14 Rait only, and the balance amount of ₹ 41, 66, 629/- is the license fee of the whole Unit No. 141 for a period of 01.04.2014 to 20.10.2014, which the appellant licensee was liable to pay in addition to leviable penalty and interest as per provisions of the Act, Rules and ANNOUNCEMENTS for the relevant year.

5. Ld. Counsel for the respondent Department also submitted that since revenue of the State was involved in the matter, so, in order to secure the revenue, proceedings under Land Revenue Act, 1954 read with section 73 (1) and (2) of the HP Excise Act, 2011, were initiated against the appellant and red ink entries were made into land records of the appellant at Mouja Samot, Sinhuta District Chamba.
6. Referring to provisions contained under condition No. 4.3 and 4.5 of the ANNOUNCEMENTS Year 2014-15, Ld. Sr. Law Officer submitted that there is a provision of penalty for non-lifting of minimum guaranteed Quota of liquor, and interest and penalty on late payment of License Fee. The appellant did not challenge the provisions contained under condition No. 4.3 and 4.5 of the ANNOUNCEMENTS, year 2014-15 before any court of law, so, the claim of the appellant on the issue is time barred. The pending arrear of the licensee has been calculated after adding the interest and penalty for the non-lifting of minimum guaranteed quota (MGQ) and on late payment of license fee. As far as the refund of ₹ 9,632/- is



concerned, Ld. Sr. Law Officer replied that the refunds are claimable on excess payment of dues only, whereas, in the present case, the appellant, himself, in statement dated 14-07-2021 admitted that the pending amount of ₹ 27, 43, 975/- will be deposited in installments of ₹5000/- each; and the appellant is depositing the dues accordingly. Also, under the HP Excise Act, 2011 there is not any provision of refund of fee after the suspension or cancellation of the license. The interest has been charged lawfully only for a period till the pending amount pertaining to the appellant was not declared as arrears under the Land Revenue Act. Replying on the issue of original case file, Ld. Sr. Law Officer submitted that the case file along with other case record pertaining to the appellant-licensee Unit No. 141 was produced, during case proceedings, before the respondent above and the same is before this Court for perusal.

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7. I have heard both the parties. Case record has also been perused in detail. Perusal of case record reveals that the appellant was an Excise Licensee of Unit No. 141, for the year 2014-15, in District Kangra, Himachal Pradesh. The annual License fee of the Unit for the year 2014-15 was ₹ 75, 24, 204/-. But the appellant- licensee defaulted in complying with the conditions of License allotment from the very beginning of the year and kept delaying payment of due license fee, to the extent that the appellant license in respect of Unit above, as per provisions of the Excise ANNOUNCEMENTS for the year 2014-15, had to be cancelled and re-allotted to another licensee. In order to recover the pending dues against the appellant-licensee, the then Assistant Excise & Taxation Commissioner-cum-Collector (LRA), Kangra (HP) as per provisions of the Act started recovery proceedings against the appellant, in the month of September 2014 itself, and, vide letter No. EXN-KAN-Excise/12408, dated 18-09-2014 and letter No. EXN-KAN-Excise/16493, dated 16-12-2014, requested Tehsildar Sinhuta to make red ink entries into land records of the appellant vide *Khata/Khatouni No. 29/41, Khasra No. 741/349, Mouja Samot*, in District Chamba. Copies of above letters have also been endorsed to the appellant. No objection on the part of appellant is there on record in this matter for more than six years; whereas, as per provisions of



section 68 (1) the Act, the appellant, on being dissatisfied with such proceedings, could have filed an appeal within thirty days of the issue of directions dated 18-09-2014 and 16-12-2014. The Assistant Excise & Taxation Commissioner-cum-Collector Grade-1, District Kangra on dated 17-01-2015 passed the orders of making red ink entries into land records of the appellant situated at *mouja* Khanoda, Tundi, Sinhuta and at *mouja* Samot in District Chamba. The very authority vide orders dated 06-02-2015 declared the arrears recoverable under LRA. After receiving NOC dated 12-03-2021 from Kangra Central Co-Operative Bank, the Dy. Commissioner of State Taxes & Excise, Kangra vide order No. EXN/KAN/Excise/2020 21/2111) dated 12-03-2021, again issued directions to the Tehsildar, Sihunta, in District Chamba to pledge/make red ink entries into land records of the appellant. The appellant preferred an appeal before the Collector, North Zone against the above directions dated 12-03-2021. The appellant has neither challenged these orders, as well, anywhere, nor, has submitted any reason either before the 1st Appellate Authority or before this Court for above inordinate delay of more than six years in filing appeal against directions and orders dated 17-01-2015 and 06-02-2015, respectively.

8. The next grievance of the appellant is that Deputy Commissioner State Taxes & Excise, Dharamshala, has passed the order, dated 12.03.2021, violating provisions of section 69 (2) of the Act alleging that the order has been passed without giving the opportunity of being heard to the appellant. However, perusal of the relevant provisions of section reveals that this section pertains to revision proceedings initiated only by the Financial Commissioner to satisfy himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit:

69. Revision.—(1) *The Financial Commissioner may, of his own at any time, call for the record of any proceedings which are pending before, or have been disposed of, by any Collector or Excise Officer, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.*

(2) *No order shall be passed under this section, which adversely affects any person, unless such person has been given a reasonable opportunity of being heard.*



So, the grievance of the appellant to the extent that he has not been provided opportunity of being heard by the Dy. Commissioner (ST&E), Kangra, in violation of provisions of 69 (2) of the Act, is misplaced and misquoted. Provisions of section 69 (2) are not applicable when the Dy. Commissioner (State taxes & Excise), passes any order under the Act. Notwithstanding the applicability of the provisions of the Act, it is quite evident from the record that the applicant has been issued notices on 12-09-2014, 18-09-2014, 16-12-2014, 23-12-2014, 10-02-2015, 27-02-2015, 11-03-2015, 16-04-2015 and 31-08-2015 in the matter, and has been repeatedly asked to deposit the sum of ₹ 27, 43, 975/-. The appellant has recorded his statements, dated 24-06-2014, 10-08-2015, 31-08-2015 and 14-07-2021 before the officers of the Department, admitting, therein, his liability of ₹ 27, 43, 975/- for whole of the Unit. In fact the last recorded statement, dated 14-07-2021, has been made in the presence of Ld. appellant-counsel, himself. These notices/orders of the Department have not been challenged before any Court of Law by the appellant for more than six years and have attained finality. Therefore, the submission of the appellant that before issuing of order dated 12-03-2021, the opportunity of being heard was not given to him is not on merit being contrary to facts available on record. Hence submission of the appellant to this extent, as well, is rejected.

9. Further, perusal of the case record in the matter reveals that the appellant had pledged above immovable property *Khata/Khatouni No. 29/41, Khasra No. 741/349, Mouja, Chamba* with the Department at the time of allotment of Unit No. 141 to him, but there were charges of Kangra Central Co-operative Bank as well against this land. The above charges were cleared by the appellant in the year 2021, thereafter, the Bank issued NOC dated 12-03-2021 in favour of the respondent Department. On cancellation of appellant license, there were dues pending under the Act against the appellant for the year 2014-15, therefore, the orders dated 17-01-2015 issued by the AETC-cum-Collector Grade-1, District Kangra for making red ink entries into land records, the orders dated 06-02-2015 declaring the arrears recoverable under L.R.A. 1954, and orders dated 12-03-2021 by the DCST&E-cum-Collector Grade-1, Kangra are as per provisions of



section 71 and 73 of the Act and the recovery proceedings have rightly and lawfully initiated in the case:

71. Power to recover license fee etc.—In the case of cancellation or suspension of a license under clauses (a), (b), (c), (d) or (e) of section 29, the license fee payable for the balance of the period for which any license would have been current but for such cancellation or suspension, including any other fee, may be recovered from such licensee as excise revenue.

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73. Excise revenue to be first charge and recoverable as arrears of land revenue.—(1)

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of excise revenue including all other amounts due to the State Government under this Act from any person shall be the first charge on the property of such person including the distillery, brewery, winery, warehouse, shop, premises, fittings, apparatus and all stocks of liquors or materials for manufacture of the same.

(2) All excise revenue including all other amounts due to the State Government under this Act, which remain unpaid after the due date, shall be recoverable as arrears of land revenue under the provisions of the Himachal Pradesh Land Revenue Act, 1954.

It is further clear that the interest has only been calculated till the declaration of arrears recoverable under L.R.A.

10. Perusal of the notices above and statements, given by the appellant as licensee of Unit No. 141, District Kangra, before the officers of the Department and signatures of the appellant on allotment sheet reveal and prove beyond an iota of doubt that the appellant was the licensee for whole of the Unit comprising of L-14 Rait, L-14 Nareti and L-14 Prei, and was, thus, liable to pay License fee for whole of the Unit (No. 141). In fact, the appellant has voluntarily deposited eight installments of ₹ 5000/- each, towards pending arrears of Unit No. 141, during 2021-22, 2022-23, therefore, the contention of the appellant that only one vend is allocated against his name is contrary to facts available on record and is rejected. For the reasons stated in the para, and admission of the appellant in his statements before the respondent authorities, there was no, further, need for the Collector to quantify the dues again.

11. The appellant has glaringly misinterpreted and misquoted the provisions of the HP Liquor License Rules, 1986 by claiming that interest payment on late fees of License Fee has been omitted vide 'H-SPECIAL CONDITIONS Under Rule 41 of the HP Liquor License Rules 1986' vide notification dated 31-03-1997. There is not any



omission of interest altogether (there is merely change in the rate of interest) on late payment of license fee in the Rules, rather, under the quoted and relied upon Rules there is specific provision for levy of interest on delayed payments. The appellant has not furnished any copy of Notification in proof of claimed omission of interest (there is only change in the rate of interest and not altogether omission of interest).

12. On claim of refund/deduction by the appellant, provisions of Section 31 of the Act can be read as under:

"31 No compensation or refund claimable for cancellation or suspension of license etc.- When a lease, license, permit or pass is cancelled or suspended under clauses (a), (b), (c) or (d) of section 29 or under section 30 the holder of such lease license permit or pass, as the case may be shall not be entitled to any compensation for its cancellation or suspension nor to refund of any fee paid or deposit made in respect thereof".

In view of above explicit provisions of the Act, as the license of the appellant was cancelled under clause (b) & (c) of section 29 of the Act, by the Collector North Zone, Palampur vide order dated 13-10-2014, therefore the appellant is not entitled to any refund/deduction and compensation. I am, also, in agreement with the Counsel for the respondent that the refunds are claimable only on excess payment of dues, whereas, in the present case, the appellant in his statement dated 14-07-2021, has, himself, admitted that an amount of ₹ 27, 43, 975/- is pending against him and will be deposited in installments of ₹5000/- each. The statement above has been made in the presence of appellant counsel, itself.

FINAL ORDER

In view of the facts discussed and reasons given in paras 7-12 above, it is clear that none of the grievances of the appellant is on merits:

- 1) No reason is forthcoming from the appellant for not filing any appeal in the matter for more than six years;
- 2) The claim of the appellant that provisions under section 69 (2) of the Act and provisions under Rules 41 of the HP Liquor License Rules, 1986 have not been adhered to is totally misplaced, wrongly quoted and falsely relied up on by the appellant; and,



- 3) The claim for adjustment and refund of dues on account of judgment of the Hon'ble Supreme Court in the matter of M/S Mohan Meakin Ltd. vs State of HP is not admissible in view of provisions of Section 31 of the Act for there are liabilities, still, pending against the appellant.

To conclude, the appeal is dismissed as rejected. The recovery proceedings initiated by the Dy. Commissioner, Kangra are legal, proper and as per provisions of the law. The impugned orders dated 23-06-2022 passed by the Collector North Zone, Palampur, are, accordingly, upheld.

Let the copy of this order be supplied to all concerned. The file after due completion be consigned to record room. Record requisitioned in the matter from the office of the Respondent authority and authorities below be returned.

Announced on 27th of January, 2023




**Financial Commissioner (Excise)
Himachal Pradesh**

Endst. No. DoST&E/FC (Excise)/Reader/2022-23/2676-80 Dated: 27-01-2023

Copy forwarded for information to:-

1. Shri Arjun Singh Jaryal Village Khanora, P.O. Tundi, Tehsil Bhatiyat District Chamba (HP).
2. Collector (Excise)-cum-Jt. Commissioner (ST&E), North Zone, Kangra, HP.
3. Dy. Commissioner (ST&E), Kangra at Dharamshala, H.P.
4. Shri Mehar Chand Jamwal, Advocate, Chamber No. 406, HP High Court, Shimla-01.
5. Shri Sandeep Mandyal, Sr. Law Officer, Legal Cell, HQ.



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