

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

Excise Appeal No. 04/2022-23
Date of Institution: 03-08-2022
Date of Order: 26-10-2022

In the matter of:

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. Collector-cum-Joint Commissioner State Taxes & Excise, Central Zone, Mandi

.....Respondents

Parties Represented by:

1. Shri Goverdhan Lal Sharma, Advocate for the Appellant.
2. Shri Sandeep Mandyal, Senior Law Officer, Ms Pappu Kumari, ASTEO Kumarsain Circle, District Shimla, Shri Mungi Ram, ASTEO Anni Circle, District Kullu for the Respondents above.

ORDER

1. This order shall dispose of above appeal filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011. The appeal has been filed against the order dated 11-07-2022, passed collectively by the Collector (Excise)-cum-Addl. Commissioner of State Taxes & Excise, South Zone Shimla and Collector(Excise)-cum-Joint Commissioner State Taxes & Excise, Central Zone Mandi, (hereinafter referred to as respondents). Vide impugned orders above, sub-vend L-14 *Rashot* of the main vend L-14 Sainj of the Appellant has been ordered to be located to another location so as to maintain residual buffer area between the sub-vend of the appellant and the main vend of the other licensee (L-14 Luhri in District Kullu, hereinafter referred to as 'other licensee'). As per



impugned orders the re-allocation is in accordance with condition No. 2.21 of the Annual Excise Announcements 2022-23 (hereinafter referred to as "Announcements").

2. Briefs in the matter are that the other licensee raised an objection regarding the existence of sub-vend of the Appellant at L-14 Rashot being run in contravention of Condition No. 2.21 of the Announcements for the year 2022-23. On this objection of the other licensee the Collector, South Zone, vide order dated 12-05-2022 directed the appellant to re-locate the impugned sub-vend, Rashot, as per provisions of Condition No. 2.21 of the Announcements. The appellant preferred an appeal against this order in this court. This Court found that as 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 Luhri of the other licensee is situated in District Kullu, so the matter had to be collectively decided by the Collectors of the concerned Zones, but same was not decided in accordance with provisions of the condition 2.21 of the Announcements. Therefore, this Court vide order dated 01-07-2022 set aside the order dated 12-05-2022 and remanded the matter back with directions 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 Respondents No.5 from their initial location existing at the time of their first allotment/renewal...."

3. Thereafter, the Collector South Zone and Central Zone, Mandi, decided the matter collectively vide order dated 11-07-2022. The appellant, again, is aggrieved by this order and has filed the above appeal.
4. Shri Goverdhan Sharma, Ld. Advocate for the appellant submitted that the applicant was allowed to run L14-Sainj at Rashot in the year 2017-2018 and 2018-2019. Thereafter the L14 Sainj at Rashot was shifted back to Sainj in the year 2019-20 and in the same financial year the applicant (after complying with all the



terms and conditions of the Announcements for the relevant year) was allowed to run Sub-vend Rashot L14 of main Vend Sainj and was running the sub-Vend in the financial year 2022-23. Ld. Counsel for the appellant submits that it is the liquor vend (L-14 Luhri) of the other licensee which has been shifted, frequently, not only in location during the years 2017-18, 2018-19, 2019-20, but also in its type of license as well (from L-2 Luhri to L-14 Luhri) in the year 2021-22. Ld. Counsel argues that as impugned Sub-Vend Rashot is in operation much prior to the one allotted in favour of the other licensee, so, in these circumstances the Appellant cannot be held liable for the violation of Condition No. 2.21 of the Announcements.

5. It was argued, further, for the appellant that in addition to "Announcements" for the year 2022-23, the Ld. Commissioner of State Taxes & Excise, Himachal Pradesh issued circular as well vide No.7 132/2021-EXN-7745-57 on 22.03.2022 containing therein that:

"3. The licensees who opt for renewal in 2022-2023 and are desirous of continuing with the sub-vends that they had in 2021-2022 will be required to give their consent for the same in writing to the concerned District Incharge. They will also be required to pay fees for the sub vend as per the Excise Announcements for the year 2022-2023. If the aforesaid process is completed before 31-03-2022, then no documentation like NOC with respect to sub-vends will be required."

6. Ld. Appellant Counsel submitted that the appellant already an Excise Licensee of L14 Vend Sainj and Sub-vend Rashot, applied for the renewal of the main Unit as well as the sub vend Rashot in terms of Excise Policy 2022-2023 and Circular dated 22nd March 2022, approval to which was deemed to be granted by the competent Zonal Collector. As per argument of the Ld. Advocate the circular depicts the policy regarding continuation of the existing sub vends in contrast to the sub vends to be sanctioned afresh by the Department, for which policy is contained in para 2.21.



7. Ld. Advocate argued that the Ld. Respondents have erred in law by not framing the issue whether the conversion of L-2 Luhri to L14 Luhri in the year 2021-2022 will have bearing on the already existing L14 Sub-Vend Rashot that is continuing in the year 2022-2023.
8. Ld. Advocate also expressed his concern that the appellant is not in a position to shift the existing Sub vend to some other place as there is no other suitable place as desired by the competent authority and if the appellant is directed to relocate the Sub-Vend to some other place, the appellant will not be able to sell the allotted minimum quota as there is no population except at the place where the Sub-Vend is presently located. During the arguments Ld. Advocate requested that in case he is not allowed to run the sub-vend from its present place, the quota allotted be cancelled and licenses fee be waived off and the sub-vend fees be refunded.
9. Shri Sandeep Mandyal, Ld Senior Law Officer replying on behalf of the respondents submitted that the impugned orders, are perfectly legal and in consonance with the material facts of the case. He submitted that the grant of sub-vend to the appellant at "Rashot" was found to be in violation of Clause 21 of Chapter II of Excise Announcements for 2022-23 and hence, the same has been ordered to be re-located at such a place that would provide requisite buffer zone between the sub-vend and main vend of the other licensees. Referring to the facts of the case, it was specifically stated that the sub-vend at "Rashot" was within 700 meters distance of the L-14 vend of the other licensee at Luhri. Appellant could not have been allotted a sub-vend beyond one third of distance between "Sainj" and "Luhri" this distance/location should not have exceeded 1.57 kms, the distance between the vend of the other licensee at "Luhri" and that of petitioners at "Sainj" being 4.7 Kilo Metres. Thus, there is a clear violation of Clause 21 Chapter II of Excise Announcements for 2022-23. Ld. Senior Law Officer further maintained that the buffer zone



contemplated by Clause 21 supra was applicable to all the vends and sub-vends in the State irrespective of their prior existence. Ld. Senior Law Officer puts his reliance on a judgment dated 24-09-2021 given by the Hon'ble HP High Court, in a similar matter, while disposing of CWP No. 4975 of 2021 in the matter of **Jatinder Singh & Ors Vs State**. Ld. Counsel for the respondents argued that in view of above facts the appellant is neither entitled to any refunds nor the minimum allotted quota of the sub-vend can be cancelled as he has only been directed to re-locate the sub-vend to a suitable place.

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10. I have heard all the parties in the matter and I have also carefully gone through the case record.
11. Perusal of record reveals that there have been regular and frequent changes in the names, locations and types of licenses of the vends, sub-vends of the other licensee (in District Kullu during the years 2017-18 till 2021-22). However, the above changes in the years 2017-18 and 2018-19 were on the directions of the Hon'ble Supreme Court. The appellant has placed nothing on record to prove that such changes were not within the ambits of law.
12. On the contrary, during the Financial Year 2022-23 an objection was raised by the other licensee regarding running of a sub vend, L-14 Rashot by the appellant in contravention of the provisions of the Announcements. Respondents, duty bound to look into the genuinity of the objection *vis a vis* Clause 21 of Chapter II of Excise Announcements for the year 2022-23, accordingly and rightly reported in the matter.
13. Appellant has based his claim for continuing with the impugned sub vend on the strength of past history of the sub vend, and circular dated 22-03-2022 issued by the Department. Appellant seems to have been driven by the fact that no objection regarding existence of the impugned sub vend was raised during the last



four years; but, it needs to be ingrained and digested that the running/renewal and operation of vends and sub vends is necessarily regulated by the Excise Announcements of the particular year, here, 2022-23. The provisions of the Excise Policies for the years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 are not applicable in the year 2022-23 and vice versa.

14. Sub-vends for the year 2022-23 are granted and approved in accordance with provisions contained under Clause 2.21 of the Announcements:

“2.21.

X X X X

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.”

Perusal of the reports submitted by the field authorities and duly endorsed by the respondents reveal that the distance between the main vend (L-14 Sainj) of the appellant and the other licensee vend (L-14 Luhri) is 4.7 Kilometers. The impugned sub-vend L-14 Rashot is situated at a distance of merely 700 meters from the other licensee's vend (L-14 Luhri). Going by the provisions of Clause 2.21, the distance of the impugned sub vend, Rashot, from L-14 Sainj, which at present is four kilometers, cannot be more than 1.57 kilometers. In other words, the impugned sub-vend has to be located at a distance of at least 3.13 kilometers from the other licensee's vend (L-14 Luhri). On account of present location of the impugned sub-vend, the same is located in violation of the



above quoted clause. Hence, the same has rightly been ordered to be re-located to such a place that would provide requisite buffer zone between vends of two licensees i.e. the appellant and the other licensee as to comply with condition No. 2.21 of the Announcements. The respondents have incorporated all these facts in sufficient detail in their impugned orders dated 11-07-2022.

15. In view of the discussion in para 11 above, the grievance of the appellant that the orders of this Court have not been complied with cannot be sustained. The other grievance of the appellant that the impugned orders have been passed without considering the submissions of the appellant is without merit in view of further discussions made in paras 12-14 above supported by the relevant judgment of the Hon'ble HP High Court in the matter of **Jatinder Singh & Ors Vs State** as has been relied upon by the respondents.

16. The appellant, subsequent to failure of the case on merits, has sought cancellation of quota allotted for L-14 Rashot liquor sub vend and waiver of license fee deposited for the sub vend. The above request cannot be granted on two accounts:

First, the sub vend of the appellant has not been cancelled; it has only been directed to be re-located to a place falling within the prescribed buffer zone,

Secondly, the sub vends do not have any independent quota. The quota of the main vend, here L-14 Sainj, is allotted to a sub vend, therefore, the request of the appellant being unjustified is rejected.

17. There is an emphases of the appellant on clarification circulated vide No. 7-132/2021-EXN-7745-57, dated 22 March 2022, referred to at para 5 above. The appellant is aggrieved that he had applied for the renewal of L-14 Sainj vend and L-14 Rashot sub-vend in compliance with Point No. 3 of the circular quoted above. May it be emphasized, here, that the circular issued above (to be read with provisions of the HP Excise Act, 2011 and

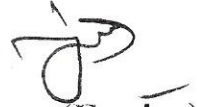


Announcements for the year 2022-23) was in respect of sub vendis which have been opened as per provisions contained in Clause 2.21 of the Announcements for the year 2022-23. The appellant himself is responsible for consequences in respect of sub vend which has been opened in violation of the provisions of the policy, as is the case in the present appeal.

18. In view of above discussion as neither contentions nor prayers of the appellant succeed, therefore, the present appeal is dismissed as rejected. Pending miscellaneous application(s), if any, are also disposed of, accordingly.

Announced on 26th of October, 2022.



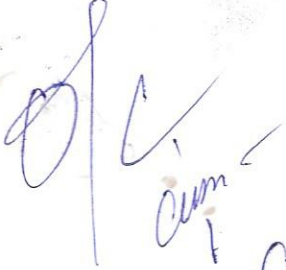

Financial Commissioner (Excise)
Himachal Pradesh


Endstt. No.: DoST&E/FC(E)/Reader/2022-23 / 33640-45

Dated: 26-10-2022

Copy for information and compliance to:

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


cum
IT Cell


Reader to the
Financial Commissioner (Excise)
Himachal Pradesh

