BEFORE THE COMMISSIONER OF STATE TAXES & EXCISE-CUM-FINANCIAL COMMISSIONER (EXCISE), HIMACHAL PRADESH

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

Appeal No.:09 of 2024

Date of Institution: 28-05-2024

Date of Order: 26-07-2024

IN THE MATTER OF: -

Sh. Sunil Khanna S/o Sh. Maheshwar Chander Khanna,
House No. 220, Sector 46-A, Chandigarh
(Retail Excise Licensee Unit No. 08 (Behdala, Una 2020-21).

.....Appellant

Vs

1. Joint Commissioner State Taxes & Excise-cum-Collector (Excise), North Zone, Palampur, District Kangra (HP).
2. Deputy Commissioner State Taxes and Excise, Una I/C Distt. Una (H.P.).

.....Respondents

Parties represented by:-

1. Sh. Inder Rana, Ld. Advocate for the appellant.
2. Sh. Wishve Bhaskar, ACSTE(HQ) and Sh. Ankush Chauhan, ASTEO, Una on behalf of the Respondents.

ORDER

1. The present appeal has been filed against the order, dated 29.04.2024, passed by the Joint Commissioner, State Taxes & Excise-cum-Appellate Authority, North Zone, Palampur, HP, wherein the authority {Collector (Excise) North Zone} treating the appeal as immature, dismissed the same as non-maintainable.

2. Brief facts in the case are that the appellant, was a retail Excise License holder for the year 2020-21, in respect of Unit No.08 (Behdala) Distt.

Una (HP). The tenure of the license was further extended by the respondent department till 30th June 2021. The appellant, attributing it to adverse impact of the COVID-19, did not lift the prescribed quarterly MGQ of liquor as per time-frame. The appellant could lift the Annual Quota of liquor and pay the Annual license fee, thereof, in respect of his Unit only by the end of the Excise year i.e.by 30thJune, 2021. The appellant, thereafter, on 21stJuly 2023, applied to the Deputy Commissioner State Taxes and Excise, Una I/C Distt. Una (H.P.) for the release of the security amount/FDR of his Unit. The DCST&E/District In Charge, Una (HP), issued the impugned "Notice", dated 10th August, 2023, to the appellant. Aggrieved by the impugned "Notice", dated 10.08.2023, above, the appellant filed an appeal before the Respondent No.1, who, observing that the order passed by the Respondent No.2 is in fact not an Order but is simply a Notice which is not maintainable, vide order, dated 01-05-2024, dismissed the appeal. Feeling aggrieved by the order of Respondent No. 1, the appellant has filed the present appeal.

3. Ld. Advocate for the appellant argued that, if the contents of the impugned "Notice" are perused minutely, the usage of the term 'Notice' by the Respondent No.2 does not deprive it from the nature of its being in fact an 'Order'. The Ld. Respondent No.1 has clearly violated an established dictum of law that it is not the letters, but the spirit and content of the documents which should be taken into account while interpreting the same. The 'Notice' which has been issued is rather in the form of an 'Order' which clearly states in the last paragraph that the appellant is directed to deposit the dues of ₹4,04,842/- (Four Lakhs Four Thousand Eight Hundred &Forty-Two only)into the Govt. Treasury and produce the Treasury Challan to the Respondent No.2 by 25-08-2023. Ld. Advocate argued that in view of above and on the face of record, the so called 'Notice' by the Respondent No. 2 is in fact an 'Order'. Ld. Advocate further argued that the appellant has further been threatened that in the event of his failure to comply with the above directions, appropriate action against him will be taken as per the Excise **ANNOUNCEMENTS** for the concerned year.

4. It was also pleaded that the Respondent No. 2, on an audit objection made by the Audit party at the time of conducting audit for the year 2020-21, has raised, as penalty, an amount of ₹4, 04,842/-against the appellant,whereas, it is a settled law that Audit information is no information.

5. Ld. Advocate further argued that neither Respondent No.1 nor Respondent No.2 has taken into considered the directions issued for the Excise Year 2020-21, by the Commissioner of State Taxes & Excise, HP, vide office order No. 7-887/2019- EXN-16877-92, dated 20-07-2020, which were binding on the respondent Department, as well as on the Audit party. Respondents, vide order above, were directed to not to take any coercive action against the retail Excise Licensees (including appellant) for non-compliance of Condition No. 5.3, 4.6, 4.27,2.35,3.26 & 3.40 of the Excise Policy 2020-21. Ld. Advocate added that no other retail excise licensee of any other liquor Unit in Himachal Pradesh has been penalized for violation of Condition No 5.3 of the **ANNOUNCEMENTS** and the order of the Commissioner State Taxes & Excise, dated 20-07-2020, has been complied with, by the other authorities, in letter and spirit.

6. Ld. Advocate relying on the provisions vide Condition No.5.3 of the **ANNOUNCEMENTS** argued that it is clear that the term vends/Unit has been deliberately used meaning thereby that it is only the unit-wise quota lifting position which was to be taken into account by the Ld. Respondents and not that of the each vend comprised in the Unit; hence, vend wise imposition of penalty is against the law. Had it not been the interpretation, the sign "/" would not have been used prior to Unit.

7. Arguing further in the case, the Learned Advocate referred to Condition No.2.22 and 3.26 of the **ANNOUNCEMENTS**, and, submitted that it is clear that either the appellant had to pay the entire license fee or had to pay penalty on the short lifted quota and it was not open for the Respondents to resort to both the options i.e. to ensure the deposit of entire License fee and also to impose penalty on quarter-wise short lifting of quota especially when the appellant by the end of the Excise

year paid the entire annual license fee and also lifted the annual allotted quota of the Unit.

8. Concluding his arguments in the case, Ld. Advocate submitted that the Hon'ble High Court of Himachal Pradesh, in its various decisions regarding the Minimum Guaranteed Quota, has ordered that the licensee cannot be compelled to sell the MGQ while there is poor market response especially when the entire license fee has been paid to the department. Therefore, the provision vide impugned Condition No. 5.2 of the **ANNOUNCEMENTS**, mandating lifting of 25%, 20%, 30% and 25% quarter wise quota, respectively, by the appellant is also violative of the pronouncements of the Hon'ble High Court of Himachal Pradesh; hence, the impugned orders passed by the Respondents are liable to be set aside in the light of above directions by the Hon'ble Court and Respondent No. 2 i.e. DCST&E, Distt. Una may be directed to release the appellant's withheld security/ Fixed Deposit Receipt(s).

9. Shri Wishve Bhaskar, ACST&E (HQ) along with Sh. Ankush Chauhan, AST&EO, District Una present on behalf of respondents submitted written replies furnished by the respondents whereby the respondents have submitted that on demand being raised by audit party, the impugned notice was issued to the appellant to deposit a sum of ₹4, 04, 842/-. On failure to abide by the directions issued, above, the release of FDRs was withheld.

10. Learned Counsel for the appellant, in his rejoinder strongly objected to raising of demand by the audit party, pleading vehemently that audit party is no authority under the applicable HP Excise Act, 2011, Rules and even under the Excise Policy/ANNOUCEMENTS for the year.

11. The representatives on behalf of the respondents submitted that the impugned 'Notice' dated 10-08-2023 may be treated as Show Cause Notice and opportunity to reply may be given to the appellant, and that thereafter the respondents will pass a reasoned order in accordance with law and the directions issued in the matter by the Government of Himachal Pradesh vide letter No. EXN-F (1)-1/2020, dated 16-07-2020, which, for further necessary action, have, duly, been communicated

further to the authorities below by the Ld. Commissioner of State Taxes & Excise vide letter No. 7-887/2019-EXN-16877-92, dated 20-07-2020.

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FINDINGS AND FINAL ORDER:

12. I have heard the parties in the matter. I have also carefully perused the case record including the impugned "Notice" issued by Respondent No. 2 and the order passed by respondent No. 1.

13. Contents of the impugned "Notice" dated 10 August, 2023, issued by respondent No. 2 reveal that a total of ₹4, 04, 842/- as dues is mentioned in the "Notice" and there are directions to the appellant to deposit the same into government treasury and produce the treasury challan before Respondent No. 2 on or before 25/08/2023. Also, on account of failure to comply, an appropriate action, has also been contemplated against the appellant.

14. In view of above, I am of considered opinion that while issuing the impugned 'Notice' there is violation of principle of natural justice. Accordingly, in view of the submissions made vide para 11 supra on behalf of the respondents, the appellant is granted four weeks' time to reply to the same. On receipt of the reply of the appellant, a personal hearing may also be afforded by the 2nd respondent and a reasoned order be passed in accordance with law and in view of the directions issued in the matter by the Government of Himachal Pradesh vide letter dated 16-07-2020. The order, thus passed may be communicated to the appellant. The appeal is accordingly disposed off.

15. Miscellaneous application(s) if any are also accordingly disposed of.

16. The parties may be informed accordingly. File after completion be consigned to records.

Financial Commissioner (Excise)

Himachal Pradesh

Endst. No. EXN/FC(E)-Reader/2024/19297-301 dated 26.07.2024

Copy for information and necessary action to:

1. Sh. Sunil Khanna S/o Sh. Maheshwar Chander Khanna, House No. 220, Sector 46-A, Chandigarh (Retail Excise Licensee Unit No. 08 (Behdala, Una 2020-21).
2. Joint Commissioner, State Taxes & Excise-cum-Collector (Excise), North Zone, Palampur, District Kangra (HP).
3. Deputy Commissioner State Taxes and Excise, Una I/C Distt. Una (H.P.).
4. Legal Cell (HQ).
5. IT Cell.

Reader