

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

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

(In Appeal Filed Under Section 68(2) of the HP Excise Act, 2011)

Appeal No.: 34/2024

Date of Institution: 01-08-2024

Date of Order: 31-08-2024

IN THE MATTER OF: -

M/s Satya Verma

L2S Charabra (Year 2024-25)

District Shimla

.....Appellant

Vs

1. Collector (Excise)-cum- Addl. Commissioner (ST&E),
South Zone, Shimla-09.

2. M/s Hem Pal Kalta, L-2/L-14 Dhalli

..... Respondents

Present:

1. Shri Peeyush Verma, Learned Advocate for the appellant/applicant.
2. Smt. Monica Attreya, ACST&E (Legal Cell) along with Miss Kusmita Kamal, ASTE&O, Excise and Other Works, District Shimla for the Respondent No. 1.
3. Shri Rakesh Sharma and Ms Sakshi Gautam, Learned Advocates for Respondent No. 2.

ORDER

1. The above appeal has been filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011 against the order, dated 31-07-2024, passed by the Collector (Excise)-cum- Addl. Commissioner State Taxes & Excise, South Zone. Vide impugned orders, L-2S Charabra (sub-vend) has been ordered to be relocated within a periphery of 2.5 KM from the main vend L-2 Kufri. The appellant, felt aggrieved by the orders above, has preferred the present appeal along with application to grant stay on the operation and execution of the impugned order during the pendency of appeal.



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2. Brief facts of the case are that the Collector (Excise), South Zone, HP, Shimla-5, earlier, vide dated 19-06-2024, on recommendations of the Deputy Commissioner State Taxes & Excise, District Shimla, had granted the appellant a sub-vend in Form L-2S, at Charabara under the main vend L-2, Kufri, for the year 2024-25. However, respondent No. 2 (Licensee L2/L-14 Dhalli), submitted a representation/objection dated 16-07-2024 against the grant of said L-2S stating that the opened sub-vend is not within the distance of not more than the one third of the total distance between the main vend of the appellant licensee and that of vend of the other licensee(s) at (L-2/L-14) Dhalli. Accordingly, vide notice dated 27th July, 2024 the appellant was informed about the above complaint/objections and directed to appear and file reply. After hearing the appellant and opposite parties, vide order dated 31st July 2024, the allotment of the sub-vend in favour of the present appellant was held to be contrary to the provisions of the Annual Excise Announcements 2024-25 and was ordered to be relocated within the periphery of 2.5 kilometers from the main vend L-2 Kufri. Aggrieved against this impugned order, the appellant has preferred the present appeal.

3. Learned Advocate for the appellant submitted that:

(1) The Himachal Pradesh Excise Act, 2011, provides for appeal and representation under Sections 68 and 69 respectively, but, the Act, nowhere provides for review of orders by any of its officers, however, the fact is that after allotment of L-2S at Charabara, vide dated 18-06-2024, in favour of the present appellant, the respondent No. 1 has issued, vide order dated 19th June, 2024, licence L-2S in favour of the appellant for sub-vend at Charabara.

(2) It is a settled position of law that any authority, exercising quasi-judicial powers, in the absence of powers of review conferred by the Statute, cannot review its own orders. The respondent No.1 while passing the order, dated 31-07-2024, on the complaint/representation of the respondent No.2, has in fact reviewed his earlier order dated 19th June, 2024, whereas there is



no provisions to review one's own orders in the HP Excise Act, 2011. Therefore, the orders dated 31-07-2024 being review of the orders dated 19-06-24 are beyond the competence, jurisdiction and powers of respondent No. 1. This being so, the impugned order is liable to be quashed and set aside on this score alone. The reliance in this regard has been placed upon the latest judgment of the Hon'ble High Court of Allahabad in the case titled *Shivani Chaurasia Versus State of Uttar Pradesh*, which, in this regard, discussed the entire case law *in extenso*.

(3) The impugned order is in violation of principle of natural justice. The appellant has been condemned unheard and has not been afforded proper opportunity to explain her position. Copy of complaint against the appellant has not been made available to her, to enable her to file proper reply. The measurements, recommending allotment of sub-vend in her favour, have been set aside and fresh measurements were conducted behind the back without hearing the present appellant and without issuance of the show cause notice to the appellant. The respondent No.1, has thus, proceeded with preconceived mind and has failed to take into account any of the defenses raised by the appellant to the show cause notice dated 27th July, 2024. As the defence has not even been discussed at all, therefore, the impugned order is liable to be quashed and set aside.

4. Per contra, it is argued on behalf of respondents No. 1 and 2 that the impugned sub-vend was opened in violation of condition No. 2.53 of the "ANNOUNCEMENTS" for the year 2024-25 in as much as the mandatory buffer area of one third of distance between the impugned sub-vend of the appellant and the main vend of the respondent No. 2 had not been maintained by the appellant. Learned Counsel for respondent No. 2 submitted that the Collector under the provisions of the HP Excise Act, 2011, HP Liquor License Rules, 1986 and ANNOUNCEMENTS FOR THE YEAR is a duly empowered license granting and regulating authority. Any granted license, on violation of terms and conditions of license, may be shifted, suspended and/or cancelled by the Collector. The respondent No. 1, in support of his arguments above, has relied on



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judgment, dated 24th of September, 2021, by the Hon'ble HP High Court, given in the matter of **Jatinder Singh & Ors Vs State of HP & Ors (CWP No. 4975 of 2021)**, where the Hon'ble Court in a similar matter has ruled that *"no fault can be found in subsequent rectification of the mistake committed by the respondents"*.

5. I have heard the parties and gone through the record of the case carefully. Arguments advanced in the present appeal give rise to the following points for determination:

- i) Whether the respondent No. 1 has reviewed its own order and thus the same is beyond the competence, jurisdiction and power of respondent No.1?
- ii) Whether, the principle of natural justice and opportunity of being heard have not been followed by not giving the copy of the complaint filed by the respondent No. 2 to the appellant to submit effective reply?
- iii) Final Order.

For the reasons to be recorded hereinafter, while discussing the aforesaid points, findings on the same are as under:-

Point No. (i) No.

Point No. (ii) No.

Point No. (iii) Appeal dismissed as per operative part of the Order.

REASONS FOR FINDINGS.

(i) During the course of arguments in the case it was vehemently argued for the appellant that the respondent No. 1 has reviewed its own order. However, from the perusal of case record it is clear that on 19-06-2024, no quasi judicial order has been passed, but, license in Form L-2S at Charabra, has only been granted subject to the provisions of the H. P. Liquor License Rules, 1986 and the supplementary conditions as announced at the time of allotment/re-allotment/renewal and supplementary conditions as amended from time to time. Condition No. 2.53 of the ANNOUNCEMENTS/Excise Policy (year 2024-25) provides that:



Such a L-2S/L-14S/L-14AS vends may be allowed within the distance of not more than the one third of the total distance between the vends 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 vends of one licensee and that of another licensee. The L-2S/L-14S/L-14AS shall be approved and granted by the Collector of the Zone concerned.

But, consequently, on the basis of fresh reports submitted by the field authorities, after objections were raised in this regard by respondent No. 2, the appellant was found not to have fulfilled the necessary criteria vide condition No. 2.53 quoted above. The appellant has not argued the case on this score nor refuted the objections raised by respondent No. 2 in this regard. Since on 19-06-2024 only license in form L-2S has been granted to the appellant, Granting of a license is not a quasi-judicial proceeding/order. Moreover, license was conditionally granted to the appellant. The order dated 31-07-2024 is certainly a quasi-judicial order, therefore the questions raised by the appellant that a quasi-judicial authority cannot review its own order is not applicable in the present case. The citation relied on by the appellant is also not applicable to the present case for the added reason that the respondent No. 1 has only rectified a mistake committed by the field authorities on account of error of judgment to measure the distance of the impugned sub-vend. Rectification of mistake, in a similar matter, has already been upheld by the Hon'ble HP High Court in the matter of **Jatinder Singh & Ors Vs State of HP & Ors (CWP No. 4975 of 2021)**, where the Hon'ble Court has ruled that "*no fault can be found in subsequent rectification of the mistake committed by the respondents*". Therefore, the argument of the appellant that the quasi-judicial authorities cannot review their own order for the lack of competence, jurisdiction and power, is, not tenable in the instant case. The appellant has opened a sub vend in violation of condition No. 2.53 of the ANNOUNCEMENTS FOR THE EAR 2024-25, which being a licensee it was bound to abide by and comply with, and when pointed out about the violation, instead of taking the corrective measures and shifting the sub vend to proper location as lawfully directed by respondent No. 1, the



appellant is trying to shift the onus on respondent Department, whereas the EXCISE ANNOUNCEMENTS explicitly provide vide Condition No 1.4 that:

(1.4) All the licensees shall be bound to comply with all the directions and orders of the Commissioner of State Taxes and Excise-cum-Financial Commissioner (Excise), Himachal Pradesh and all other Excise Officers, which may be issued from time to time by them.

Also, respondent No. 1 being the L-2S License granting authority under the HP Liquor License Rules, 1986, the same authority has the power to cancel/suspend any granted license and if the licensees are found violating the provisions of the Act, Rules and Policy. The respondent No. 1 is competent to issue necessary directions in the matter as has been done in the present case. The appellant itself has, thus, failed to open and locate the opened sub-vend as per provisions of the applicable Rules and Policy. During the course of arguments in the case, the appellant nowhere has denied the fact that it had not violated the provisions of condition No. 2.53 of the Excise Policy. Therefore, the appellant cannot question the impugned order in terms of legality and competence:

2.53 The additional license in form L-2S/L-14S/L-14AS shall be granted to a retail licensee with the main vend in form L-2/L-14/L-14A within the State. The fixed annual license fee for the above licenses will be Rs. 6,00,000/-. Whereas, keeping in view the issue of smuggling of liquor into the State, the L-2S/L-14S/L-14AS vends shall be granted within a distance of 100 meter from the borders on the payment of Rs.3,00,000/- as annual license fee. Such a L-2S/L-14S/L-14AS vends may be allowed within the distance of not more than the one third of the total distance between the vends 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 vends of one licensee and that of another licensee. The L-2S/L-14S/L-14AS shall be approved and granted by the Collector of the Zone concerned.

(ii) On perusal of case record, it is found that the appellant has duly been served with a notice prior to case hearing and order of re-locating the sub vend to a suitable place. There is a copy of notice, dated 27-07-2024, on record, issued to the appellant licensee asking it to explain its position with regard to sub vend opened. The reply, dated 27-07-2024, submitted to the notice is also there on record.



Besides, the appellant has also put its appearance during the course of case hearing. Thus, there is no substance in the appellant's argument that it has not been given opportunity of being heard effectively in the matter. As a matter of fact, the appellant has not argued the case on merits where it was charged and objected that the sub-vend was not opened as per provisions of law and the opened sub vend did not fall in the criteria of the 1/3rd distance as laid vide condition No. 2.53 of the Excise Policy.

(iii) FINAL ORDER:

In view of the discussion made hereinabove, I do not find any reason and substance in the arguments of the appellant that impugned order is a review of the earlier order passed by respondent No. 1 and is beyond competence and jurisdiction. The facts and record available on case file are also contrary to the claim of the appellant that it has not been heard effectively in the matter before passing order of re-locating the sub-vend. The appellant has also not disputed the issue of violation of distance parameter while opening the sub vend. This justifies the objection raised in the matter by respondent No. 2 that while opening the sub-vend at Charabra, the provisions vis-à-vis mandated distance were not abided by the appellant. Therefore, the appeal being without merit is liable to be dismissed and is accordingly dismissed. The impugned order dated 31-07-2024 passed in accordance with the provisions of the HP Excise Act, Rule and Excise Policy, is accordingly upheld to be valid and legal. In view of this final order, the interim order dated 05-08-2024 is vacated.

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




Financial Commissioner (Excise)
Himachal Pradesh

Endst. No. EXN/Fin. Comm.(E)-Reader/2024- 21923-28 Dated:31-08-2024

Copy for information and further necessary action to:

1. M/s Satya Verma, L-2S Charabra, District Shimla (Year 2024-25), District Shimla.
2. Collector (Excise)-cum- Addl. Commissioner State Taxes & Excise, South Zone, Shimla-05.
3. M/s Hempal Kalta, L-2/L-14 Dhalli, District Shimla (Through DCST&E District Shimla, Shimla-09.
4. Dy. Commissioner State Taxes & Excise, District Shimla, Shimla-09, HP.
5. Legal Cell, HQ.
- ✓ 6. IT Cell.


Reader

ORDER