

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

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

Appeal No. 35/2024

Date of Institution: 07-08-2024

Date of Order: 25-09-2024

**IN THE MATTER OF: -**

M/s Hem Pal Kalta, Retail Licensee, (Year 2024-25)

L-2/L-14, Boileauganj, Shimla

Vs

1. Addl. Commissioner, State Taxes & Excise-cum-Collector, South Zone, Shimla-05
2. M/s Salima Devi, Retail Licensee, L-2/L-14, Totu, District Shimla

**Parties Represented by:**

1. Shri Rakesh Sharma, Learned Advocate, along with Ms. Sakshi Gautam, Learned Advocate for the appellant.
2. Smt. Monica Attreya, ACST&E (Legal Cell) and Sh. Vijay Kumar, ST&EO, District Shimla, on behalf of the respondent No.1.
3. Shri Peeyush Verma, Learned Advocate for respondent No. 2.

**ORDER**

The above appeal filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011, is against the order endorsed dated 03-08-2024, passed by the respondent No. 1 i.e. Collector (Excise)-cum-Additional Commissioner (State Taxes & Excise) (South Zone). Vide impugned order above the Respondent No.1, on remand of matter to him and after



re-hearing the appellant has not found any merit to interfere with his original order dated 02-05-2024 and has held that the L-2/L-14 Totu vend has been opened as per the provisions of Rule 37 (4) of the Himachal Pradesh Liquor License Rules, 1986 read with Condition No. 10.2 of the Annual Excise ANNOUNCEMENTS FOR THE YEAR 2024-25. The appellant aggrieved against the order, dated 03-08-2024, has preferred the present appeal. The matter pertains to shifting of L-2/L-14 Totu vend by respondent No 2. The vend has been shifted towards L-2/L-14 Boileauganj vend of the appellant, by about 500 meters, from its original place (for the year 2023-24).

2. Further briefs in the matter are that the appellant is a retail liquor licensee of Cart Road Unit, for the year 2024-25. The retail L-2/L-14 Boileauganj vend is one of the vends under this Unit. M/s Salima Devi (Respondent No. 2) is a Licensee of Totu Unit for the year 2024-25 with retail vends L-2/L- 14 Lower Totu, L-2/L-14 Totu, L-2/L-14 Kanwar Niwas Totu. It is alleged that Respondent No. 2, without prior approval from the competent authority, has shifted its L-2 / L-14 Totu vend from its existing position at Power House-Totu Chowk link road (away from NH 205) to Shimla-Mataur National Highway, 205, which is now at a distance of about 850 meters from L-2-L-14 Bioleauganj vend of the appellant. During the previous year the distance between the vends of the opposite parties was about 1300 meters. Accordingly, aggrieved, the appellant had filed an appeal before the respondent No. 1, who vide order dated 02-05-2024, rejected the same.
3. Felt aggrieved, by the above order, dated 02-5-2024, the appellant filed an appeal before this forum. The matter, vide order dated 19-07-2024, was remanded to respondent No. 1 with the following observations:

In view of the above quoted and explicit provisions of the HP Liquor License Rules, 1986 and Condition No. 10.2, as the retail



vend L-2 / L-14 Totu has been sanctioned for Totu locality, allowing the same to function from its current disputed place {main road (Shimla-Mataur National Highway 205) towards Boileauganj locality} would be against the spirit of provisions of Rule 37 (4) read with Condition No. 10.2, above. If the vend is allowed to run from its present disputed location then the initial and intended purpose of allotting the vend to Totu (locality) would be defeated. There is conviction in the argument of the appellant that the vend by Respondent No. 2 has been shifted and allowed to function in Boileauganj locality and there is need to localize L-2/L-14 Totu vend, and, thus, retract the same to Totu locality. This contention of the appellant, based on Condition No. 10.2 of the ANNOUNCEMENTS, needs to be re-considered and decided afresh. The matter, in view of above discussion and mentioned provisions of the Rules and ANNOUNCEMENTS, is, therefore, remanded back, to the Respondent No. 1, for consideration afresh, within two weeks.

4. Ld. Advocate for the appellant argued that in compliance with directions from this forum, the respondent No. 1 afforded opportunity of hearing to the appellant as well as respondent No. 2. Learned Advocate submitted that respondent No.1 has only re-affirmed his previous decision, vide order dated 19-07-2024; thus, the respondent No. 1 has only completed the rituals of rehearing without taking into consideration the contentions raised by the appellant and without addressing the observations made by this forum. Ld. Advocate further argued that no finding has been given on observations made by this forum.
5. Shri Peeyush Verma, Learned Advocate filed a written reply on behalf of respondent No. 2 and submitted that the Ld. Collector (respondent No. 1) has passed the order which is just, valid and legal and be upheld. Ld. Advocate for respondent No. 2 has relied on the case of *Vishal Goswami Vs State of Himachal Pradesh & ors, CWP No. 1253 of 2018* wherein distance of 400-500 meters has been held to be reasonable, whereas in the present case the distance is more than 850 meters.



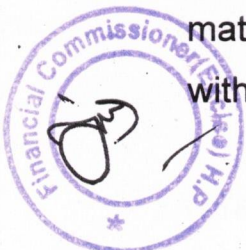
6. Smt. Monica Attreya, ACSTE, (Legal Cell) along with Shri Vijay Kumar, ASETO, Excise, District Shimla, submitted on behalf of the respondents that the owner of the premises where the vend was situated previously has refused to rent out the premises to the Respondent No. 2; therefore, the Respondent No. 2, perforce, opened the impugned vend at Shimla-Mataur National Highway, 205, which is now at a distance of about 850 meters from L-2-L-14 Boileauganj vend of the appellant. The impugned vend, as per report of the Revenue authorities, is within the same Municipality Ward (Ward No. 7) and is in Totu locality. The vend is at a suitable distance of about 850 meters from the appellant vend at Boileuganj and has no remarkable adverse effect on sale of liquor of the appellant's Boileuganj vend. The impugned vend has been granted approval as per provisions of the ANNOUNCEMENTS for the Year 2024-25 and the order of respondent No. 1 reaffirming his original order dated 02-05-2024 is in accordance with the provisions under Clause 10.5 (1) of the ANNUAL EXCISE ANNOUNCEMENTS, 2024-25 and Rule 37 (4) of the Himachal Pradesh Liquor License Rules, 1986.

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**FINDINGS AND FINAL ORDER:**

7. I have heard all the parties in the matter and perused the case record with respect to units and retail vends in dispute. I have carefully gone through the impugned order passed afresh by Respondent No. 1. on being remanded for consideration in terms of order dated 19-07-2024.

1) The first issue was regarding locating L-2/L-14 Vend to Totu locality only. On the basis of reports of revenue authorities, sought in the matter, the impugned vend is located in Municipality Ward No. 7 and is within the revenue village Totu, itself. In view of above reports, the



impugned vend is in Totu locality and therefore, the contention of the appellant that the issue of vend being opened towards Boileauganj locality remained unaddressed is not based on facts; hence liable to be rejected and is rejected accordingly.

2) The other issue raised, was regarding violation of clause 10.2 of the ANNOUNCEMENTS FOR THE YEAR 2024-25 and Rule 37 (4). But, in view of the reports above, by the competent authorities, the impugned vend is localized to Totu area, the conditions vide Clause 10.2 of the ANNOUNCEMENTS FOR THE YEAR 2024-25 and Rule 37 (4) are fulfilled in the matter:

Condition No. 10.2 of the ANNOUNCEMENTS for the Year 2024-25:

**10.2 The licensees shall have to make their own arrangements for procuring liquor and also for suitable vends (shops) to carry on their business in the localities for which particular licenses are sanctioned. It will be obligatory on the part of the licensee to get the premises and the name of the salesman approved along with his photograph, before starting the vends. The premises will be within a specific locality, where the location is not further specified, for which such licenses are sanctioned, but licensees cannot claim that the new premises should remain restricted within the area and premises in which the vends had been functioning previously.**

Rule 37 (4) of the HP Liquor License Rules, 1986:

**37. (4) Licensed premises shall be premises owned or leased in by the licensee. It will be obligatory on the part of the licensees to get the licensed premises approved from the Collector before starting the shop:**

**<sup>1</sup>[Provided that when the licensee submits his application, for approval of the premises and the name of the salesman, to the office of the Assistant Excise and Taxation Commissioner/ Excise and Taxation Officer, Incharge of the district on or before 1st April and obtains an acknowledgement from the office of the Asstt. Excise & Taxation Commissioner/Excise and Taxation Officer, Incharge of the district in token of having submitted the aforesaid application on or before 1<sup>st</sup> April, the submission of such application shall be deemed to be a provisional approval of the premises and the name of the salesman mentioned therein.]**



The licensee, respondent No. 2, has accordingly made its own arrangements for the vend in Totu locality. The findings, in the matter, given in para 22 of the impugned order passed by respondent No. 1 are as under:

“the approval for allotment of L-2/L-14 vend Totu has been accorded by the government on 01-04-2024 and the vend was established on same day by the licensee at new location. The licensee has duly applied for grant of license in Form L-2 and L-14 through online Excise portal on dated 04-04-2024.....the excise online portal has been opened for registration on dated 03-04-2024 itself.”

In view of above, the contention of the appellant that respondent No. 2 had not applied for approval of the premises to the office of the Dy. Commissioner of State Taxes & Excise on or before 01-04-2024 and thus there was violation of condition No. 10.2 of the ANNOUNCEMENTS, is not tenable and is rejected for the want of merit.

3) Another concern raised in the matter by the appellant was regarding adverse effect on the sale of liquor at L-2/L-14 Boileauganj due to above shifting of vend to new place by respondent No. 2. However, as per sale reports available on record, the claim of the appellant is not supported. Moreover, in view of judgment of Hon'ble HP Court relied upon by respondent No. 2, in *CWP No. 1253 of 2018 Vishal Goswami Vs State of Himachal Pradesh*, a distance of 400-500 meters, between the two vends, has been held to be a reasonable distance, which in the instant case is about 850 meters, hence, this contention of the appellant is also not convincing and is accordingly rejected.

8. On the basis of above discussion, I am of the considered view that respondent No. 1 has given conclusive findings on all the observations made by this forum vide order dated 19-07-2024 and has addressed these issues conclusively. Accordingly, I do not agree with the contention of the appellant that respondent No. 1 has just completed the rituals of



re-hearing in the matter without looking into contentions raised by the appellant and without addressing the observations made by this forum. The impugned order dated 03-08-2024, passed by respondent No. 1 is upheld and the appeal filed by the appellant, being without considerable merits, is rejected accordingly.

9. All the concerned parties be informed and the file after due completion be consigned to record room.



Financial Commissioner (Excise)

Himachal Pradesh

Endst. No. DoST&E/FC(E)-Reader/2024 / 25081-86

Dated: 25-09-2024

**Copy for information and further necessary action to:**

1. M/s Hem Pal Kalta, Retail Lic. L-2/L-14 Boileauganj, District Shimla.
2. M/s Salima Devi, Retail Lic. L-2/L-14 Totu, District Shimla.
3. Collector (Excise)-cum- Addl. Commissioner State Taxes & Excise, South Zone, Shimla-05.
4. Dy. Commissioner (Excise), District Shimla, Block No. 5, Shimla-09, HP.
5. Legal Cell, HQ.
6. IT Cell.

Reader