

**BEFORE THE COMMISSIONER OF STATE TAXES &
EXCISE-CUM-EXCISE COMMISSIONER
HIMACHAL PRADESH**

Review Petition No. 02/2024
Date of Institution: 21-12-2024
Date of Order: 01-02-2025

IN THE MATTER OF:

M/s Digital Vision, 176 MauzaOgli,
Kala Amb, District Sirmour (HP)
(MD-VI, Licensee, Year 2024-25)

Parties Represented by:-

1. Sh. Sameer Thakur and Smt. SnehBhimta, Learned advocates, Sh. KonicGoyal partner and Shri Parshotam Lal Goyal, authorized signatory for the Petitioner.
2. Smt. Monica Atreya, ACSTE (Legal Cell) for the respondent.

ORDER

(Under Rule 72 of the Himachal Pradesh Narcotic Drugs and Psychotropic
Substances Rules, 1989)

1. This order shall dispose of the Review Petition filed for recalling of the order dated 23.11.2024 as well as the Show Cause Notice, dated 14.08.2024, issued against the Petitioner Company.
2. Brief facts giving rise to the present Review Petition are that vide order dated 23.11.2024, the Petitioner firm was found to have contravened the terms and conditions of MD-VI Licence and the said MD-VI Licence was ordered to be revoked vide aforesaid order dated 23.11.2024 (for the reasons stated in the said order). In fact, the said proceedings were initiated under Rule 54 (1) of the Himachal Pradesh Narcotics Drugs and

Psychotropic Substances Rules, 1989 (hereinafter referred to as "HPNDPS Rules"). According to the proviso to Rule 54 (1) of the HPNDPS Rules, the reasonable opportunity of showing cause against the action proposed to be taken under sub rule 1 of Rule 54 was required to be given to the Petitioner Company. Accordingly, Show Cause Notice dated 14.08.2024 was issued to the Petitioner Company. In nutshell, the proceedings initiated on the basis of the said Show Cause Notice (dated 14.08.2024) finally merged/culminated into the passing of the order dated 23.11.2024. Thus, virtually the Petitioner Company is seeking the review of the order dated 23.11.2024 by filing the present Review Petition. This fact is further fortified from Rule 72 of the HPNDPS Rules which provides for the review of the "Order" passed by the Excise Commissioner.

3. Admittedly, the Petitioner Company has filed CWP No. 14211 of 2024 and the said Writ Petition was withdrawn by the Petitioner Company with the liberty to file Review Petition under Rule 72 of the HPNDPS Rules in the appropriate court of law. Thereafter, the Petitioner Company has filed the present Review Petition. Notice of the present petition was issued to the respondents. The Petitioner Company sought the review of the order dated 23.11.2024 as well as the Show Cause Notice dated 14.08.2024, precisely on the following grounds: -

- i) The order dated 23.11.2024 violates the principles of natural justice as the report of inspection committee was never supplied to the Petitioner Company.
- ii) The Show Cause Notice dated 14.08.2024 did not point out any discrepancy in respect of selling of Morphine Tablets to M/s Vellinton Healthcare by the Petitioner Company and this violates the principle of natural justice as the petitioner has been condemned unheard and has not been afforded any opportunity to defend its case.

- iii) The petitioner has duly manufactured Codeine Phosphate and Morphine Tablets for M/s Vellinton Healthcare, M/s Shiva Medical Hall and M/s Skincare Creations under MD-VI license granted to the petitioner to "manufacture" such formulations and the quota of the raw material of such formulation was duly sanctioned by the Central Bureau of Narcotics which is a nodal agency for granting quota and, therefore, (as per Petitioner Company) there was no violation of MD-VI license.
- iv) The Excise Department despite of being aware of the quota allocation in the year 2018 & 2022, respectively, never objected to the same and had there been any objection from the Department regarding not possessing MD-VI license in respect of the three firms, which the Petitioner Company was not aware as such, the Petitioner or the other three companies could have easily procured the license which entailed a "puny fee of ₹500/-" each in the relevant year.
- v) The personnel from the Excise Department itself has the keys to the strong room where the raw drugs are kept in the factory premises of the Petitioner Company and duly take quarterly stock position of the raw drugs in the strong room and no objection at any time was ever raised by the department.
- vi) The MD-VI license as well as the quota by the respondent was renewed on yearly basis. Even the MD-II license and the permission to use the drugs for manufacturing, is issued by the Excise Department on consignment basis. At no point of time, during the various stages of obtaining quota or renewal of MD-VI license, it was ever pointed out to the petitioner that there was any violation of the MD-VI license and the Excise Department cannot be allowed to turn back now and say that due procedures were not followed or that there was any violation of the terms and conditions of the licence.
- vii) The Petitioner Company was authorised to possess particular limit of raw drugs in a particular year through MD-VI license and the Petitioner

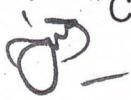


Company has not exceeded the maximum limit of Codeine Phosphate and Morphine Sulphate.

viii) Both the raw drugs i.e. Codeine Phosphate and Morphine Sulphate are duly accounted for and the Petitioner Company has duly used the said quotas, as granted by the respondent, only for manufacturing against purchase orders of M/s Shiva Medical Hall, M/s Skincare Creations and M/s Vellinton Healthcare.

4. The Ld. Counsel on behalf of the Petitioner Company reaffirmed and reiterated the grounds taken in the Review Petition.

5. Per contra, the representative of the Department asserted that the license in form MD-VI was revoked as the Petitioner Company has violated the terms and conditions of MD-VI license vis-à-vis the HPNDPS Rules. It was further argued that the order dated 23.11.2024 is well reasoned and self-explanatory and does not warrant any review. It was further argued that the order dated 23.11.2024 and the facts as well as the reasons stated therein are to be appreciated as a whole and not in piecemeal. It was further argued that the Petitioner Company is deliberately and intentionally intermingling the facts and circumstances which formed the basis of the initiation of the present proceedings, with the proceedings initiated against M/s Vellinton Healthcare, and the Petitioner Company is taking a totally mutually inconsistent and destructive stand in the proceedings initiated against the Petitioner Company vis-à-vis the proceedings initiated against M/s Vellinton Healthcare, in as much as in the present proceedings the Petitioner Company has taken a stand that the Petitioner Company (i.e. M/s Digital Vision) is manufacturing the drugs for M/s Vellinton Healthcare which itself is contradictory to the document relied upon by the Petitioner Company during the course of the proceedings initiated under Sub Rule



(1) of Rule 54 of the HPNDPS Rules; whereas, in the proceedings under Sub Rule (1) of Rule 54 of the HPNDPS Rules initiated against M/s Vellinton Healthcare, the Petitioner Company was shown to be under the loan license agreement.

6. I have heard both the parties and gone through the record of the case. Arguments advanced by both the parties give rise to the following points for determination: -

- (I) Whether there exists any ground to review the order dated 23.11.2024 as well as the Show Cause Notice dated 14.08.2024?
- (II) Final order.

For the reasons to be recorded hereinafter my findings on the same are asunder:-

- (I) No.
- (II) Final order. Review Petition dismissed and the order dated 23.11.2024 is confirmed as per operational part of the order.

REASONS FOR FINDINGS

(1) Admittedly, Sh. Parushottam Lal Goyal, who appeared as authorised signatory on behalf of the Petitioner Company during the course of the proceedings under Rule 54 (1) of the HPNDPS Rules is also one of the partners of M/s Vellinton Healthcare. Not only this Sh. Konic Goyal, who has filed the present Review Petition is one of the partners not only in the Petitioner Company but also in M/s Vellinton Healthcare. It is also admitted that the Petitioner Company was initially

granted MD-VI license to use Codeine Phosphate salt in the formulation for the **manufacturing** of "XCOF Syrup and ROSCOF Syrup".

(2) It is evident from the MD-VI license, granted in the favour of the Petitioner Company, that the Petitioner Company is only authorised to "**Manufacture**" the formulation mentioned in MD-VI License containing Codeine Phosphate salt and, thereafter, to sell the products/ preparations/ Narcotic Drugs with strict adherence to the provisions of the NDPS Act and HPNDPS Rules, any other Rules which may from time to time be made under the said Act as well as the Drugs and Cosmetics Act and the Rules framed thereunder.

(3) Thus, it is incumbent on the Petitioner Company to procure the allocated quota of Codeine Phosphate in its own name being "**Manufacturer**" on the basis of the MD-VI license, which in fact was issued only in favour of the Petitioner Company; and thereafter to sell the preparations/ products/ Narcotic Drugs containing Codeine Phosphate manufactured thereon, after maintaining the proper records as per the terms and conditions of MD-VI license, which are regulated by Clause (2) of Rule 50 of the HPNDPS Rules. In other words, the Petitioner Company being licensed chemist and manufacturer was under statutory obligation to process the Narcotic Drugs into preparations authorised in MD-VI license and to futhersell the same in accordance with the terms and conditions of MD-VI license as well as Clause (2) of Rule 50 of the HPNDPS Rules.

(4) Notably, the Petitioner Company in its reply dated 17.08.2024 to the Show Cause Notice dated 14.08.2024, itself, admitted that the two firms namely M/s Shiva Medical Hall and M/s Skincare Creations are not holding any MD-VI license and these two firms are wholesale traders of pharma products including "Narcotic Drugs". It has also been specifically mentioned in the said reply that all the Narcotic Drugs are manufactured under the name of the Petitioner Company and

the said Narcotic Drugs were being supplied to the above stated two firms. Furthermore, the Petitioner Company has also specifically mentioned in the said reply that the quota imported on account of M/s Shiva Medical Hall and M/s Skincare Creations was supplied exclusively to these two firms and proper sale invoices were accordingly, issued.

(5) Thus, the act and conduct of the Petitioner Company and the manner in which the stocks have separately been kept by the Petitioner Company shows that under the garb of MD-VI License issued in favour of the Petitioner Company alone, the Petitioner Company has procured and possessed Codeine Phosphate on "account for" M/s Shiva Medical Hall and M/s Skincare Creation, which in turn leads to the irresistible conclusion that the Petitioner Company was acting as proxy to these two firms on a single MD-VI License issued in its favour alone.

(6) Thus, the admissions made by the Petitioner Company clearly shows that once the above stated two firms are dealing in the Narcotic Drugs, these two firms either require MD-VI License (Chemists License) or MD-V (Druggists License under the HPNDPS Rules). Admittedly, these two firms did not possess any license under the HPNDPS Rules. Hence, procurement of salt in the form of Codeine Phosphate on behalf of the other firms who did not possess any MD-VI License, and thereafter dispensing the Narcotic Drugs to the firms, who also did not possess any authorisation /Druggists License under the HPNDPS Rules, is a clear violation of the terms and conditions of the MD-VI License, because the MD-VI License was issued only to the Petitioner Company.

(7) Furthermore, the possession of Codeine Phosphate salt "on account for" other firms/company not possessing any license in the form of MD-VI is strictly prohibited as the license so issued in the form of MD-VI or any other authorisation thereof is strictly personal to the firm/person in whose favour it is issued. This is further crystal clear from Rule 55(1)

which provides that MD-VI License shall be held to have been granted "personally" to the person named therein and the said license/permit is non-transferable.

(8) As far as the arguments regarding non-supply of the Committee report is concerned, the said argument is totally contrary to the record in as much as premises was inspected in the presence of the representative/partner of the Petitioner Company. Even their statement was recorded during the course of inspection. The copy of the inspection report was duly signed by the representative/partner of the Petitioner Company and the copy of the said inspection report was duly supplied to the representative/partner, namely Shri Parushotam Lal Goyal, of the Petitioner Company as it is evident from the acknowledgment, qua the receipt of the copy of the inspection report by the representative/partner of the Petitioner Company, made on the side inspection report, itself.

Not only this, after the issuance of the Show Cause Notice dated 14-08-2024, the Petitioner Company has filed a detailed reply dated 17-08-2024 to the said show cause notice.

The Petitioner Company never raised any such objection qua the non-supply of the inspection report of the said Committee during the course of whole of the proceedings conducted under Rule 54(1) of the HPNDPS Rules against the Petitioner Company.

Thus, the record as well as the conduct of the Petitioner Company falsifies the argument qua the non-supply of the inspection report of the Committee.

(9) As far as the argument that Show Cause Notice dated 14-08-2024 did not point out any discrepancy in respect of the selling of



Morphine tablets to M/s Vellinton Healthcare by the Petitioner Company and the argument that the Petitioner Company has manufactured Codeine Phosphate and Morphine tablets for M/s Vellinton Healthcare is concerned the said arguments are totally misleading and contrary to the record.

(10) It is crystal clear from the Show Cause Notice that the reference is only with respect to M/s Shiva Medical Hall and M/s Skin Healthcare. The firm namely M/s Vellinton Health Care was not in the picture at the time of issuance of Show Cause Notice dated 14-08-2024.

(11) As a matter of fact, during the course of the proceedings against the Petitioner Company under Rule 54(1) of the HPNDPS Rules, one Shri Parushottam Lal Goyal, authorised signatory, in order to justify the transactions and in support of his case/reply submitted the Job Card Invoice, Commercial Invoice, packaging list, Airways Bill, Export Authorisation letter No. Exp-147/2023 date 04-07-2023, Authorisation for official approval of export dated 04.07.2023, Certificate dated 20.03.2023 issued by the Director General of Health Services, Ministry of Health Sri Lankan Govt. Documents containing Shipping Bill Summary, Invoice Details, Item Details, Export Scheme Detail etc. All these documents submitted on behalf of the Petitioner Company bears its stamp and signatures of Sh. Parushottam Lal Goyal, as its Authorised Signatory, one of the partners in the Petitioner Company as well as in M/s Vellinton Healthcare.

(12) It was evident from the above said documents relied upon by the Petitioner Company that its address has been mentioned without mentioning its name as "M/s Digital Vision". Furthermore, in some of these documents M/s Vellinton Healthcare has mentioned the address of the Petitioner Company and in some of the documents involving same transaction, the address of M/s Vellinton Healthcare has been mentioned, which in itself raised suspicion qua the entire transaction.



(13) Furthermore, it is evident from the Job Work Invoice relied upon by the Petitioner Company that the product "VELLMORPH-10 TABLET" so mentioned has been manufactured by M/s Vellinton Healthcare, as it is also evident from the product name "MORPH" has been prefixed by the word "VELL" and it is shown to have been packed in the premises of the Petitioner Company.

(14) Therefore, the act and conduct of the Petitioner Company of packing the Narcotic Drugs being manufactured by the other firm itself is a violation of the terms and conditions of MD-VI license.

(15) Not only this, all the products shown to be manufactured by M/s Vellinton Healthcare and purported to have been packed by the Petitioner Company are illegal and contrary to the provisions of the HPNDPS Rules in as much as M/s Vellinton Healthcare was not possessing any MD-VI license in the month of June, 2023 and July, 2023 in respect of which the transactions were shown to have been made by M/s Vellinton Healthcare as the MD-VI license was initially issued in favour of M/s Vellinton Healthcare on 05.09.2023 (which was later renewed upto 31.03.2025) i.e. two months later from the date of alleged transactions.

(16) Thus, M/s Vellinton Healthcare was not authorised to manufacture any Narcotic Drugs during the period qua which the Job Work Invoice and Commercial Invoice and consignment of 2100 boxes containing 2,10,000 tablets of Morphine Tablets (Morphine 1.75 kgs) was exported to Sri Lanka and then Job Work Invoice and Commercial Invoice having been relied upon by the Petitioner Company in support of its case in the proceedings under Rule 54 (1) of the HPNDPS Rules.

(17) Significantly, the Petitioner Company did not report the sales earlier to M/s Vellinton Healthcare or to M/s Yaden International, in its Sale Returns submitted to the Department 01.01.2023 to 31.12.2023.

(18) Notably, M/s Vellinton Healthcare has deliberately and intentionally concealed the factum of stated manufacturing/ transactions at the time of applying for MD-VI license to the DCST&E or to the Excise Commissioner despite the fact that Sh. Parushottam Lal Goyal, authorised signatory of the Petitioner Company is also the partner of M/s Vellinton Healthcare.

(19) Significantly, the Chemist License in the form MD-VI later on issued in favour of M/s Vellinton Healthcare was to possess and sell the medicines containing narcotic substance (mentioned in the license itself) and not to manufacture the Narcotic Drugs. Since, M/s Vellinton Healthcare deliberately and intentionally concealed the factum of manufacturing Narcotic Drugs at the time of applying for MD-VI license, therefore, separate proceedings under Rule 54 (1) of the HPNDPS Rules were ordered to be initiated against the said M/s Vellinton Healthcare and the copy of the order dated 23.11.2024 and the documents relied upon by the aforesaid Sh. Parushottam Lal Goyal, authorised signatory were also supplied to submit reply to the Show Cause Notice which was issued separately.

(20) Notably, M/s Vellinton Healthcare in reply to the show cause notice took the stand that M/s Vellinton Healthcare has applied for the loan license for the manufacturing of tablets and syrups in the premises of the Petitioner Company which in turn not only falsified stand taken by the Petitioner Company that the Petitioner Company manufactured the drugs but also belied the documents especially Job Work Invoice, in as much as the expression "Loan License" as defined in Explanation to Rule 69 A of the Drugs and Cosmetic Rules and the expression "Job Work" defined in Section 2 (68) of the HPGST Act 2017, both the terms are not only mutually destructive but also are mutually inconsistent in as much as under the loan license M/s Vellinton Healthcare is manufacturing the products by availing the manufacturing facility/ infrastructure of the



Petitioner Company WHEREAS in case of job work, the Petitioner Company only deals with the treatment or processing of goods belonging to M/s Vellinton Healthcare. In other words, where there is loan license there cannot be a job work or vice versa.

(21) As far as the arguments regarding the allocation of quota and the issuance of permit in form MD-II is concerned, the allocation of quota is one aspect and use of the said quota strictly in accordance with the terms and conditions of MD-VI license is another aspect, thus, merely because the quota has been allocated to the Petitioner Company, the same does not authorise the Petitioner Company to use the said allocation at its whims and wishes that too in contravention of the terms and conditions of the license. The Petitioner Company was under statutory obligation to make use of the said allocated quota strictly within the ambit and scope of the terms and conditions of MD-VI license as well as in accordance with the HPNDPS Rules. As far as the issuance of permit in the form of MD-II is concerned, it is evident from the order dated 23.11.2024 that directions have already been given to the Joint Commissioner State Taxes & Excise Admn./ HQ for initiating separate proceedings qua issuance of MD-II permit by the then DCST&E (s) to M/s Digital Visions "on account of/ for" M/s Shiva Medical Hall and M/s Skincare Creations, and the memo of show cause notice have already been issued to this affect. Thus, the argument made in this regard by the Petitioner Company is legally unsustainable.

(22) The Petitioner Company has been held to have violated the terms and conditions of MD-VI license as per reasons for findings given qua the points of determination formulated in Para 10 of the order dated 23.11.2024 and the said order is to be read as a whole and not in piecemeal. Rather, the Petitioner Company made an attempt to introduce totally new case, as is evident from the grounds which was not the subject matter of pleading in the proceedings initiated under Rule 54

(1) of the HPNDPS Rules, these proceedings culminated in to the passing of the order dated 23.11.2024.

Final Order

In view of the discussions and the reasons stated herein above, I am of the considered opinion that there is no ground to review the order dated 23.11.2024 as well as Show Cause Notice dated 14.08.2024 and there is no merit in the Review Petition and the same is liable to be dismissed and is accordingly dismissed and final order dated 23.11.2024 (inclusive of show cause notice dated 14.08.2024) is hereby ordered to be confirmed.

In view of the confirmation of the order dated 23.11.2024 and revocation of MD-VI license in respect of the Petitioner Company, the Petitioner Company and the Deputy Excise & Taxation Commissioner (Addl. Commissioner State Taxes & Excise (South Zone) are further directed to comply with the conditions mentioned in Sub Rule (xiv) of the Rule 50 (2) of the HPNDPS Rules as well as the condition no. 18 of the MD-VI License no. 5/2011 (issued in its favour) forthwith.

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

Announced on 1st Day, February 2025.



Excise Commissioner
Himachal Pradesh

Endst. No. EXN/EC(NDPS)-Reader-/2025/2297-2306 Shimla 171009 Dated: 01-02-2025

Copy forwarded for information to:

1. The Central Bureau of Narcotics, The Mall, Morar, Gwalior (MP) 474006.
2. The State Drugs Controller (HP), Baddi, District Solan (HP).
3. Addl. Commissioner State Taxes & Excise (South Zone), Shimla-05 for information and further necessary action.
4. Jt. Commissioner (State Taxes & Excise) (Admn./HQ), Shimla-09.
5. Dy. Commissioner (State Taxes & Excise), District Sirmour (HP).
6. Legal Cell, Deptt. Of State Taxes & Excise (HQ), Shimla-09.
7. M/s Digital Vision, 176, MaujaOgli, Kala Amb, District Sirmour (HP).
8. M/s Vellinton Healthcare, Vill. Rampur Jattan, Trilokpur Road, Kala Amb, District Sirmour (HP).
- ✓ 9. IT Cell for uploading the same on Department website.
10. Guard file.



**Excise Commissioner
Himachal Pradesh**