

**BEFORE THE COMMISSIONER (STATE TAXES &  
EXCISE) - CUM-FINANCIAL COMMISSIONER,  
HIMACHAL PRADESH, SHIMLA-171009**

Review Petition No.01/2024

In Appeal No. 34/2024

Date of Order: 20-02-2025

**In the matter of: -**

M/s Satya Verma  
L-2S, Charabra, District Shimla,

.....Petitioner

Versus

1. Collector (Excise)-cum- Addl. Commissioner (ST&E), South Zone, Shimla-09 & Ors.
2. M/s Hem Pal Kalta, L-2 /L-14, Dhalli, Shimla HP.

.....Respondents

**Present: -**

1. Shri Besar Singh Verma, Learned Advocate for the petitioner.
2. Smt. Monica Atreya (Legal Cell-HQ), for the Respondent.

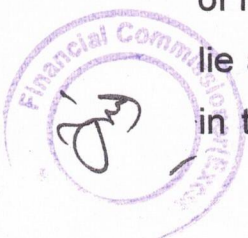
**Order**

1. The instant review petition has been filed against the order dated 31-08-2024 passed under Section 68 (2) of the Himachal Pradesh Excise Act, 2011 by this Forum as Financial Commissioner (Excise), in Appeal No. 34/2024 in the matter of Satya Verma L-2S (Sub-vend) Charabara, Dhalli, District Shimla.
2. Brief facts of the case are that the Collector (Excise), South Zone, HP, Shimla-5, vide letter dated 19-06-2024, on the recommendations of

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Deputy Commissioner State Taxes & Excise, District Shimla, granted to the Petitioner 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 L-2/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 one third of the total distance between the main vend of the Petitioner licensee and that of vend of the other licensee at (L-2/L-14) Dhalli. Accordingly, vide notice dated 27<sup>th</sup> July 2024, the Petitioner was informed about the above complaint/objections by Respondent No. 1 and directed to appear and file its reply. After hearing the Petitioner and opposite parties, Respondent No. 1 vide order, dated 31st July 2024, held the allotment of the sub-vend in favour of the present Petitioner to be contrary to the provisions of the Annual Excise Announcements for the year 2024-25 and ordered to relocate the sub-vend within the periphery of 2.5 kilometers from the main vend i.e. L-2 Kufri. Aggrieved against the impugned order of the Collector, (South Zone), the Petitioner filed an appeal before this forum which was rejected vides order dated 31-08-2024. Aggrieved by the order dated 31-08-2024, the Petitioner preferred a Civil Writ Petition before the Hon'ble Himachal Pradesh High Court, but withdrew the same preferring review petition before this forum.

3. The petitioner seeks to review the order dated 31-08-2024, on the grounds that on the issue of distance of the sub-vend from the main vend no finding has been recorded in the order *ibid*.
4. Smt. Monica Atreya, ACST&E Legal Cell, argued that there is no provision of review under the HP Excise Act, 2011 and the review petition does not lie at all. On merits also, the Petitioner did not raise the issue of distance in the appeal and this fact has been specifically mentioned in the order



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dated 31-08-2024. Moreover, the Respondent No. 1 in the impugned order dated 31-07-2024 has specifically mentioned that “the distance of sub-vend (L-2S Charabra) from L-2/L-14 Dhalli is 4.3 Kilometer and the from L-2 Kufri is 3.2 Kilometer, total distance between L-2 Kufri and L-2/L-14 Dhalli 7.5 kilometer” Therefore, there is violation of conditions 2.53 of the HP Excise Announcement, 2024-25 the sub-vend was ordered to be shifted in order to comply with conditions ibid.

5. I have heard the parties in the matter. Petitioner above has raised altogether a new issue in the matter, which had not been subject matter of contention in the appeal. In view of this, there is no ground for review in the instant case. It is worth mentioning here that the Petitioner in the grounds of Appeal, itself, has raised the issue that under the provisions of the Himachal Pradesh Excise Act, 2011, the Quasi-Judicial authorities do not have the power of review. The ground of appeal, submitted by the Petitioner in Appeal No. 34 of 2024 are being reproduced below for reference:

*It is submitted that Himachal Pradesh Excise Act, 2011, provides for appeal and representation under Sections 68 and 69 respectively. The Act, **does not provide for review by any of its officers**, whereas, the fact of the matter is that allotment stood dated 18<sup>th</sup> June, 2024, where after the licence was also issued in favour of the Petitioner for the liquor sub-vend at Charabara on 19<sup>th</sup> June, 2024. The Respondent No. 1 while passing the order on the complaint/representation of the Respondent No. 2, vide order dated 31<sup>st</sup> July, 2024 reviewed his earlier order dated 18<sup>th</sup> June, 2024, which **was beyond his competence and capacity. It is settled position of law that any authority, exercising quasi-judicial powers, cannot review its orders, in the absence of powers of review conferred by the statute.** This being so, the impugned order is liable to quashed and set aside on this score alone. The reliance in this regard is placed upon the latest judgment of the Hon'ble High Court of Allahabad in case titled Shivani Chaurasia Versus State of Uttar Pradesh, which discuss the entire case law in this regard in extenso and copy whereof is Annexure A-7.*



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That without admitting, even assuming, the jurisdiction of the Respondent No. 1 to pass order dated 31<sup>st</sup> July, 2024, it is submitted that the impugned order though makes & mention of three different reports regarding distance, but the same nowhere cites any reason for discarding the report in favour of the present Petitioner and accepting the report against the Petitioner. No reasons, whatsoever, have been set-forth in the impugned order stating the grounds, which prompted the Respondent No. 1 to disbelieve the report regarding distance in favour of the present Petitioner. The impugned order being bereft of any reason, thus, failed to pass the test of judicial scrutiny. The impugned order is hit by Principle of Promissory Estoppel and Principle of Legitimate Expectations. The perusal of the record would reveal that after allotment of liquor sub-vend in favour of the present Petitioner, the Petitioner has expended & sum in excess of Rs 25,00,000 for the setting up of the vend, purchase of liquor and making arrangements of staff and transportation. It is submitted that expenses have been incurred only after the allotment of the liquor sub-vend on the basis of report submitted by a competent officer of the Respondent- Excise Department. Having expended such & huge sum, after allotment in accordance with the law in favour of the Petitioner, the Petitioner was having & legitimate expectation of appropriate profit/ returns from the investment. However, the impugned order holding the allotment to be not in accordance with Excise Announcements, has been passed and relocation of the sub-vend ordered, overlooking the fact that there was nothing on record to show that Petitioner had any role to play in the allotment. The entire process has been undertaken by the competent officers of the Respondent-department and allotment made only after due fulfillment of all the codal formalities. Therefore also, the impugned order is bad in law and legally unsustainable.

That the impugned order is in violation of Principle of natural justice. The Petitioner has been condemned unheard and has not been afforded proper opportunity to explain her position. Copy of complaint against the Petitioner the Petitioner 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 directed without hearing the present Petitioner and thereafter, those measurements conducted behind the back and in the absence of the Petitioner and even prior to the issuance of the show cause notice to the Petitioner. The Respondent No.



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*I thus was proceeding with preconceived mind and has failed to take into account any of the defenses raised by the Petitioner to the Show Cause notice dated 27<sup>th</sup> July, 2024. Leave alone, giving reasons for not accepting the defence of the Petitioner, the defence has not been discussed at all. Therefore, the impugned order is liable to be quashed and set aside.*

6. From the submitted grounds of Appeal, it is clear that the Petitioner did not raise any issue before this forum *vis-a-vis* distance of the L-2S Charabra sub-vend from the main L-2 Kufri vend. This aspect has been specifically mentioned in the order, dated 31-08-2024, and relevant part of the same order is being reproduced here under for reference:

*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 Petitioner was found not to have fulfilled the necessary criteria vide condition No. 2.53 quoted above. **The Petitioner 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 Petitioner, Granting of a license is not a quasi-judicial proceeding/order. Moreover, license was conditionally granted to the Petitioner.*

Thus, it is clear from the findings given in the order, dated 31-08-2024 itself, that the Petitioner did not raise the issue of distance in the Appeal; therefore, there was no cause of action before this forum to adjudicate the matter which was never raised. On this account the review petition is not tenable.

7. Notwithstanding the facts given in preceding para, on merits of the case, it is clear that earlier the district In-charge had recommended the opening of L-2S Charabra sub-vend by measuring the distance on mile stone basis and trip meter reading basis, between the proposed sub-vend of the petitioner and the main vend i.e. L-2/L-14 Dhalli of the other licensee i.e.



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Respondent No. 02. However, Respondent No. 2 filed an objection/representation regarding correct distance between L-2S Charabra and L-2/L-14 Dhalli. To redress the issue, eliminate any error and to measure the correct distance between L-2 Kufri, L-2S Charabra and L-2/L-14 Dhalli, the distance was re-measured. In order to ensure accurate measurement, the distance was measured with the help of odometer of Govt. Vehicle. Re-measurement of distance between L-2S Charabra & L-2/L-14 Dhalli revealed that the actual distance between L-2 Kufri & L-2/L-14 Dhalli is 7.5 Kilometers and the distance between L-2S Charabra and L-2/L-14 Dhalli is 3.2 Kilometers; but the sub-vend has been opened at distance of 3.2 KM from L-2 Kufri instead of provisioned 2.5Km i.e. the opened sub-vend has transgressed the distance (is located excess) by 700m towards L-2/L-14 Dhalli, as has been verified by the field authorities. Thus there is a clear breach of condition No. 2.53 of the Annual Excise Announcement 2024-25 by the petitioner and was needed to be rectified, and has accordingly been ordered by the Respondent No. 1 vide order dated 31-07-2024 and the order being legal was upheld.

8. In view of the above, the present review petition is not maintainable on account of, firstly, that there is no provision in the Himachal Pradesh Excise Act to review an order passed by the authorities under section 68 of the Act *ibid* as has been the arguments of the Petitioner itself as mentioned in para 5 above. Secondly, the grievance of the petitioner that on the issue of distance no finding has been recorded in respect of sub-vend ordered by the Collector to be relocated within the periphery of 2.5 kilometers from the main vend, the issue above, though, was not raised in the grounds of appeal submitted by the Petitioner, however as per discussion, on merits, in the preceding para above, re-measurement of the distance between L-2 Kufri, L-2S Charabra and L-2/L-14 Dhalli, carried out on the objection/representation of Respondent No.2 revealed



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that the disputed sub-vend has been opened in violation of condition No. 2.53 of Annual Excise Announcement 2024-25 as the sub-vend is located excess by 700 meters towards L-2/L-14 Dhalli, therefore, the same has rightly been ordered, by Respondent No. 1, to be relocated to an appropriate distance vide order dated 31-07-2024, and the order was accordingly upheld by this forum vide order dated 31-08-2024.

In view of discussion and reasons given above the review petition is not maintainable and same is rejected after due consideration.

All the parties be informed accordingly and the case file be consigned to the record room after due completion.



  
Financial Commissioner (Excise),  
Himachal Pradesh.

Endst. No. EXN/CST&E-FC(E)/Reader-2025/-3769-74

Dated: 20-02-2025

Copy forwarded to:

1. M/s Satya Verma, L-2S, Charabra, District Shimla, Himachal Pradesh.
2. The Collector (Excise), South Zone, Shimla-9, (HP).
3. M/s Hem Pal Kalta, L-2/L-14 Licensee, Dhalli, Shimla, HP.
4. Legal Cell, HQ.
- ✓ 5. IT Cell, HQ.
6. Guard File.



Reader