

**BEFORE THE COMMISSIONER OF STATE TAXES & EXCISE-
CUM-FINANCIAL COMMISSIONER (EXCISE), HP, SHIMLA**

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

Appeal No.: 19/2024

Date of Institution: 12-07-2024

Date of Order: 17-03-2025

IN THE MATTER OF:

M/s Himachal Wine,
L-13 Licensee for the year 2023-24, Matt Sungal,
District Kangra, HP.

.....Appellant

Versus

1. Joint Commissioner, State Taxes and Excise- cum- Appellate Authority, North Zone, Palampur, H.P.
2. Joint Commissioner, State Taxes and Excise, North Enforcement Zone, Palampur, District Kangra, H.P.

.....Respondents

PARTIES REPRESENTED BY:

1. Sh. Satish Kumar Awasthi, Learned Advocate for the Appellant.
2. Smt. Monica Atreya, ACST&E, Legal Cell, on behalf of the Respondents.

ORDER

Appeal under Section 68(2) of the HP Excise Act, 2011

1. The present appeal has been filed under Section 68(2) of the HP Excise Act, 2011 (herein after referred to as "the Act") against the orders, dated 31.05.2024, passed by the Respondent No.1. The Appellant claims that the original copy of the orders was received on 08-07-2024. Vide impugned orders, above, besides a penalty of Rs.50,000/- imposed under section 43 of the Act, the Appellant, on substantial {5148.875 Proof Litres (Pls) of Country Liquor (CL)} variations in liquor stock, has also been directed to deposit an amount of ₹16,49,357/- on account of



License fee, Additional License Fee, ETD Development Fund and Milk Cess.

2. Further brief facts in the matter are that the Appellant, on application, was granted license in Form L-13 for opening a whole sale liquor vend for the year 2023-24 at Matt Sungal, Tehsil Palampur, Distt. Kangra, HP. On 06.01.2024, an inspection team from the office of the Respondent No. 2, conducted inspection of L-13 premises of the Appellant in the presence of Sh. Sanjeev Kumar, an authorized person, from the licensee. During the course of inspection, the inspecting team found that there were stock variations worth 1353 cases of CL. During the course of above inspection, the inspection notebook was also not found in the Appellant's licensed premises. The inspection team further noted that ten cases & five loose quarts and twenty-five loose nips of Santra No.1 (CL) were also separately kept in the above premises. Batch Number and date of bottling was not printed on this stock. The representative on behalf of the Appellant explained that on the directions of the ASTEO Baijnath Circle and the Collector (Excise), North Zone, this stock has been kept apart. The Appellant explained to the inspecting team that this stock was received as such from the bottling plant and forms part of the stock. The inspecting team directed the Appellant to keep this stock apart in *Supurdgari* and further directed to not to sell this stock. Explaining the shortage in stock, Sh. Sanjeev Kumar, Authorized Signatory, admitted that the shortage in the stock was due to the sending of some supplies of liquors to retail vends without Excise Passes.
3. Requiring to show the cause and produce relevant record in respect of above noticed discrepancies during the course of inspection, Respondent No.1 issued a notice, dated 08.02.2024, to the Appellant. Another notice, dated 04-04-2024, was also issued the Appellant requiring to show cause



as to why the Appellant license should not be cancelled u/s 29(c) of the Act for the irregularities noticed and consequent contravention of the provisions of the HP Liquor Licence Rules, 1986 (hereinafter referred to as "the Rules") and committal of offence u/s 43 of the Act by the Appellant. The Respondent No. 1, after hearing the Appellant passed the impugned order above. Aggrieved by the order *ibid*, the Appellant has filed the present appeal.

4. The learned Advocate for the Appellant submitted that the inspection notebook could not be produced before the inspecting team, on demand, as it was kept in the Appellant's office, which was situated at a different location. The inspection notebook, though, was subsequently produced before the inspecting team. The Appellant argued that there was no stock difference except the stock found less at the time of inspection, which was only ninety-one cases and seven quarts and twenty-five loose nips. Learned Advocate admitted that this much stock was sent to the retail vends without Excise Passes. Rest of the difference, argued learned Advocate, was due to breakages/leakages claimed from time to time and duly entered in the Stock and Sale register. The learned Advocate also argued that the monthly statements of stock received, sales conducted and the breakages claimed were regularly submitted to the ASTEO Circle. The learned Advocate argued that ten cases, five quarts and twenty-five loose nips of Santra No.1 (CL) were kept apart on the directions of the Zonal Collector and ASTEO Circle as the requisite Batch Number and the Date of Bottling was not printed on above-mentioned stock. The learned Advocate submitted that the inspecting team was informed about the source of above stock and that the same was duly received from the bottling plant as such and had been duly entered in the Stock and Sale register.



5. The Ld. Advocate argued that the Circle ASTEO verifies the stock every month and records the same in the inspection notebook. Placing the copy of the inspection notes made in the inspection notebook in the months of August till November, 2023, the learned Advocate submitted that no irregularity was pointed out in the above inspection note book. The learned counsel for the Appellant argued that the original inspection notebook, in use earlier, had been lost in transit and the Circle ASTEO has recorded this fact on the inspection notebook itself. The learned Advocate asserted that the Circle ASTEO produced some of the monthly statements before the team of Respondent No. 2 and the Appellant had mentioned the breakages in these statements. The learned Advocate submitted that the Respondents, however, did not accept these statements on the ground that the Circle ASTEO had not diarized the same. The learned Advocate argued that on the mere assumption and proposition that the breakages cannot be allowed automatically without verification from the concerned Officer In-Charge, premises, the Appellant could not be penalized for the mistakes committed by the Circle ASTEO.

6. The learned Advocate for the Appellant also argued that the Appellant had procured 7,79,697 Pls of country liquor between the periods 01.04.2023 to 06.01.2024. The learned Advocate claimed that on this quantity, the allowed for breakage as per condition 6.12(xvii) of the EXCISE ANNOUNCEMENTS, for the year 2023-24, was available to the extent of 0.60%, while the Appellant had claimed it within the permissible limits i.e. @ 0.585 %, which was allowable to the Appellant. It was also submitted that the license fee and other levies were chargeable only, if, the Respondents were able to prove that the Appellant had issued the quantity of liquor in question to the retail vends, which was not the case.



7. The learned Advocate contended that the breakages do take place and there is a provision for it in the EXCISE ANNOUNCEMENTS Year 2023-24; and the same should have been verified by the Department to resolve the issue, instead of burdening the Appellant with a huge demand.
8. Replying to the arguments of the Appellant, the learned Counsel Smt. Monica Atreya, ACST&E, Legal Cell, on behalf of the Respondents submitted that on the day of inspection not only irregularities were found in the stock, but, the inspection notebook was also not produced on demand. Also, the instances of issue of liquor without passes were also noticed by the inspection team and were admitted by the authorized person present, there in the L-13 premises, on behalf of the Appellant. Ld. Counsel for the Respondents submitted that these are apparent breaches of section 43 of the HP Excise Act, 2011 and the levies and penalty imposed by the Collector (Excise) (Respondent No. 1) are, therefore, lawful, as the Appellant was unable to produce the directed record at the time of inspection. Moreover, the Appellant was bound to keep a proper record of all the receipts and supplies of liquor as per terms and condition of the granted L-13 License, provisions of the applicable Rules and Act; however, as the appellant, himself, has admitted the factum of having supplied liquor to the retailers without issuing passes thereto, therefore, the impugned order is lawful and may be upheld, submitted the learned Counsel on behalf of the Respondents.
9. I have heard all the parties in the matter and perused the case record and replies submitted by them. After due consideration of same, detailed observations and findings in the matter are as under:

- A. It is the admitted case of the Appellant that the inspection notebook, at the time of inspection by the Respondent No. 2, was kept at a

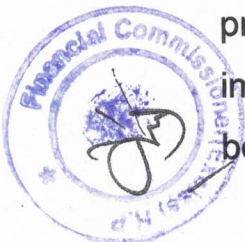


different location and could not be produced on demand and was only subsequently produced before the Inspecting team. The factum of inspection notebook not found on spot is a violation of provisions of sub Rule 17 and 18 of the Rule 37 of the HP Liquor License Rules, 1986. The provisions, *ibid*, are quoted here below for reference:

37(17): The licensee shall maintain an inspection note-book with the page numbered consecutively duly authenticated by the Excise Inspector and hand it over on demand to any Excise Officer of the First Class of the Excise Department on a receipt being given therefore any punishment or warning incurred by the licensee without forfeiture or cancellation of his license, shall be recorded in this book.

37(18): The licensee shall at any time produce for inspection on demand by any Excise Officer of the First Class of Excise Department, his license, accounts, registers and inspection note-book and shall allow the inspection of his registers, stocks and premises by the said officer.

From the perusal of the above provisions of the Rules, it is clear that the License, Inspection Notebook, Registers and Account books are to be kept at the licensed premises and the same, on demand, are to be produced, on spot, before any Excise Officer of the First Class of the Excise Department; but in the instant case the Appellant has failed to produce the inspection notebook on demand. As per record available, it is found that the original inspection notebook was stated to be misplaced by the Appellant "during transit" implying thereby that the inspection notebook was not being duly kept at the licensed premises, which is a violation of the provisions of the above quoted Sub Rules 17 and 18 under Rule 37 of the HP Liquor License Rules, 1986. Therefore, the impugned proceedings and order, dated 31-05-2024, of the Respondent No. 1, imposing penalty for above-mentioned violations are upheld for being in accordance with the provisions of the Rules and Act.



- B. During the course of arguments, the learned Advocate for the Appellant, first, stated that there was no stock difference; but, then subsequently admitted that at the time of inspection, a stock of ninety-one cases and seven quarts and twenty-five loose nips of CL was found short and the Appellant, himself, has admitted that this stock was issued to the retail licenses without Excise Passes. This act of omission and commission on the part of the Appellant is an offence vide clause (b) of Section 43 of the Act, quoted below:

Section 43: Penalty for certain acts by Licensee or his servant.- *Whoever, being the holder of a licence, permit or pass granted under this Act or being in the employ of such holder or acting on his behalf-*

- | | | | | | |
|-----|---|---|---|---|----|
| (a) | X | X | X | X | X |
| (b) | <i>Fails wilfully to produce such license, permit or pass on demand of any Excise Officers;</i> | | | | |
| (c) | X | X | X | X | X |
| (d) | X | X | X | X | X |
| (e) | X | X | X | X | X. |

The Levies, Duties, Fee and penalty on this account has, thus, rightly been imposed by the Respondent No. 1 and the same, being within the ambit of law, are upheld.

- C. Further, perusal of the case record, arguments of the Advocate and admission of the Appellant reveals that ten cases, five quarts and twenty-five loose nips of Santra No.1 (CL) on being found without requisite Batch Number and the Date of Bottling, were kept apart, on the directions of the Zonal Collector and ASTEO Circle. However, the assertion on behalf of the Appellant is that the above stock was duly received from the bottling plant as such. This argument of the



Appellant is not tenable in the eyes of the law as the liquor mentioned above was stocked and possessed in contravention of the provision of the HP Excise Act, 2011 and Rule 38(23) read with Rule 38(15) of the HP Liquor License Rules, 1986. The relevant provisions, for ready reference in the matter, are quoted below:

38(15) (vi): The labels used on the bottles filled with Indian made foreign spirit shall bear the name of month and year of bottling, either in printed form or rubber stamp.

38(23): A licence in form L.15 for the bottling of country spirit - Except the following, special conditions relating to the bottling of Indian made foreign spirit under L.11 and bottling of country spirit as in the Distillery Rules, shall apply mutatis mutandis to the bottling of country spirit under licence L.15.

The above provisions clearly provide that the labels used on bottles filled with spirit **shall bear the name of month and year of bottling** either in printed form or in rubber stamp. However, the Appellant, in respect of above mentioned quantity of liquor, which was found stored and stocked in his licensed premises, has failed to abide by the given provisions. Hence, the same, being possessed in violation of Rules quoted above, was liable to be subjected to realization of levies, duties and fees, including penalties, as has rightly been ordered and subsequently levied and imposed by the Respondent No. 1. The impugned order, being legally tenable, is therefore, upheld.

- D. The argument of the learned Advocate that the other differences and variations recorded in stock were due to breakages and leakages, are not on merits as the Appellant has not got the breakages verified from concerned Officer In-Charge. There is neither any application nor any document on record in support of breakages claimed by the Appellant. The arguments of the learned Advocate that a breakage of 0.60% is admissible to him and that he has only accounted for the



breakages at the rate of 0.585%, within the provisions, as per conditions No. 6.12(xvii) of the Excise Announcement for the year 2023-24, is not corroborated for being deficient in view of the relevant provisions in the matter contained vide condition number 6.12 (xvii) quoted below for reference:

Condition No. 6.12 (xvii): A breakage of 0.60% in total shall be allowed for in-storage and in-transit losses to the L-13 wholesale vends subject to maintenance of proper record of the breakages and verification thereof by the ASTEO/STEO In charge.

The appellant in this particular case has not been able to show and prove that he has maintained proper record of breakages. The appellant has merely made entries in Stock and Sale register, but has not got the same verified from the concerned Officer In-Charge. Breakage allowance, as per provisions of the ANNOUNCEMENTS, 2023-24 is subject to maintenance of proper record and verification thereof by the ASTEO/STEO In-Charge. The Appellant has not produced any supporting document/proof, in support of breakage claim, before any of the authorities. In fact, it was upon the Appellant to prove, by producing relevant proof that breakages had actually occurred, for this added fact, also, breakage is inadmissible mechanically; therefore, the Respondent No. 1 in the impugned orders, has, rightly levied duties, fee and penalty on the less stock recorded during the inspection.

Final Order

In view of the observations made in para 9 (A to D) above, it is clear that none of the grounds, on which appeal has been filed, is on merit. The impugned order of Respondent No. 1, directing the Appellant to deposit an amount of ₹ 16, 99, 357/- (Licenses Fee ₹ 14, 15, 941/-, Addl. License Fee ₹75, 517/-, ETD Dev. Fund ₹20,



596/-, Milk Cess ₹1, 37, 303/- and a penalty of ₹50, 000/, u/s 43 of the HP Excise Act, 2011), is **upheld** for being lawful and being in accordance with the provisions of the HP Liquor License Rules, 1986 and HP Excise Act, 2011. The appeal is accordingly dismissed.

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

Announced on this day i.e. 17-03-2025.



**Financial Commissioner Excise
Himachal Pradesh**

Endst. No. EXN/CST&E-FC (E)/Reader/2025- 5930-37 Dated:17-03-2025

Copy for information to:

1. M/s Himachal Wine, L-13 Matt Sungal, District Kangra, HP {through Dy. CST&E (Excise), Kangra, HP}.
2. Sh. Sanjeev Kumar S/o Late Sh. Mast Ram R/o VPO Kandwari, Tehsil Palampur, District Kangra, HP-176061 (Special Power of Attorney for the Appellant).
3. Collector (Excise)-cum-Jt. Commissioner (ST&E), North Zone, Palampur, District Kangra, H.P.
4. Collector (Excise)-cum-Jt. Commissioner (ST&E), North Enforcement Zone, Palampur, District Kangra, HP.
5. Dy. CST&E (Excise), District Kangra, HP.
6. Legal Cell (HQ).
7. IT-Cell, HQ.
8. Guard file.

Reader